United States Court of Appeals

for the Second Circuit

EXHIBITS

UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

No. 76-6150

United States Court of Appeals

FOR THE SECOND CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Plaintiff-Appellee*

v.

LOCAL 14, INTERNATIONAL UNION OF OPERATING ENGINEERS;
LOCAL 15, INTERNATIONAL UNION OF OPERATING ENGINEERS;
ET AL., *Defendants-Appellants*

On Appeal from the United States District Court for the Southern District of New York

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[redacted]

EXHIBIT - VOLUME 1

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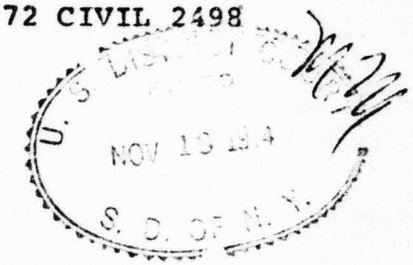
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff	Before: HON. CHARLES H. TENNEY, District Judge
vs.	72 CIVIL 2498
LOCAL 14 INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL., Defendants.	



New York, September 13,16,19, 1974
September 20,24, 1974

STENOGRAPHER'S MINUTES

135

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LOCAL 14 INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 15 INTERNATIONAL UNION OF OPERATING ENGINEERS, THE IRON LEAGUE OF NEW YORK CITY, INC., THE CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION, GENERAL CONTRACTORS ASSOCIATION OF NEW YORK BUILDING CONTRACTORS' AND MASON BUILDERS' ASSOCIATION, THE CEMENT LEAGUE, STONE SETTLING CONTRACTORS' ASSOCIATION, ALLIED BUILDING METAL INDUSTRIES, RIGGING CONTRACTORS ASSOCIATION, CONTRACTING PLASTERERS ASSOCIATION, EQUIPMENT SHOP EMPLOYERS,

Defendants.

72 Civ. 2498

Before: HON. CHARLES H. TENNEY, D.J.

New York, September 13, 1974;
9.30 A.M.

APPEARANCES:

PAUL J. CURRAN, ESQ., United States Attorney for the Southern District of New York;
Michael Devorkin, Esq., and
Steven J. Glassman, Esq., Assistant U.S. Attorneys, of Counsel.

DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C., ESQRS., Attorneys for Local 14-14B;
Robert A. Kennedy, Esq., and
Alan J. Reardon, Esq., of Counsel.

CORCORAN & BRADY, ESQS., Attorneys for Local 15;
William Corcoran, Esq., and
Robert D. Brady, Esq., of Counsel.

SHEA, GOULD, CLIMENKO & KRAMER, ESQS., Attorneys for General Contractors Association;
James J.A. Gallagher, Esq., and
Peter Stergos, Esq., of Counsel.

(All other defendants not represented.)

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THE CLERK: For trial, Equal Employment Opportunity Commission against Local 14 International Union of Operating Engineers, et al.

Plaintiff ready for trial?

MR. DEVORKIN: Plaintiff is ready.

THE CLERK: Defendants?

MR. KENNEDY: Defendants ready.

MR. BRADY: Ready.

THE COURT: I understand that certain of the defendants will not be appearing; is that correct?

MR. DEVORKIN: So far as I know, your Honor, that is correct. They have had notice of the meeting before the Magistrate of the trial.

THE COURT: Yes. Also I have a pre-trial order which I received from the Magistrate -- it has not been signed by the parties yet. There may be a matter in dispute but I am prepared to go ahead without the pre-trial order, on the understanding that in the next week or so you can get the thing signed up. I would like to have agreement on the area, if possible, since this is a long trial, and I have only a certain amount of time that I can give to this trial.

MR. GALLAGHER: Your Honor, I am appearing on behalf of General Contractors Association.

THE COURT: Yes.

MR. GALLAGHER: It is my understanding from government counsel and from the complaint that there is no contention of liability for our client.

THE COURT: Well, I am trying to get a pre-trial order signed. I have not got it yet, but I suggest that we don't argue the matter now.

MR. DEVORKIN: There is no contention as to that, your Honor.

THE COURT: There is no contention.

MR. GALLAGHER: Then from that, your Honor, as I understand the purpose of the hearing, it is for the purpose of fixing liability only, which would seem to mean that we do not belong here for that purpose.

MR. DEVORKIN: That is our understanding, your Honor. Mr. Gallagher can be here or not as he sees fit, but we are not asking for a judgment of liability against them.

THE COURT: I suggest, Mr. Gallagher, that until we get a pre-trial order executed that you attend.

MR. GALLAGHER: I would like to do that.

THE COURT: The pre-trial order should define finally what is going to be involved here.

I am starting off today under some disability

because I do not have a signed pre-trial order. I have a fairly extensive pre-trial order, which I take it you have not had the opportunity to look at.

MR. GALLAGHER: I got that this morning, your Honor.

THE COURT: I really do not know what it says with respect to General Contractors Association.

MR. GALLAGHER: There is a reference in there that we dispute, but at the same time I do not want to participate in any hearing where there is no contention on the issue for which the hearing is being held. I think it is a waste of my time and the Court's time for me being here, and I do not want my participation --

THE COURT: Well, if insofar as General Contractors Association there is no issue involved, no liability, then clearly I am not going to concern myself with that, and you would be wasting your time being here.

MR. GALLAGHER: That is what I say.

THE COURT: As of this morning I suggest that you stay around until we get the pre-trial order executed, because you are named as a party, and it would seem to me that until we have a pre-trial order defining what the issue is here you should stay.

MR. GALLAGHER: That is without prejudice to

my position.

THE COURT: I am sure you do not prejudice your position.

If you want to sit in the back of the courtroom you may, but I suggest you stay around and see what is going on.

MR. GALLAGHER: Thank you, your Honor.

THE COURT: Particularly since we do not have a pre-trial order. Okay?

MR. GALLAGHER: Yes.

MR. DEVORKIN: The government would want to make an opening statement.

THE COURT: I wouldn't make it too lengthy. I read the proposed pre-trial order which I got last night. I didn't study it. I also read the trial memorandum.

MR. GLASSMAN: Just a brief opening statement and summary of the order of proof for your Honor.

Your Honor, in this case the government seeks to remedy violations of Title 7 of the Civil Rights Act of 1964 constituting a pattern and practice of discrimination against both black and Spanish surnamed individuals.

The discrimination in employment to be presented in this case will moreover deal with all aspects of employment in the industry, including recruitment, training, job referral, upgrading of skills and union membership.

We are dealing here with unions who historially were fundamentally non-white and who to this date the government will show have minority membership and we mean black and Spanish surnamed in all instances in this case, minority membership of approximately 3 per cent for Local 14 and 7 per cent for Local 15.

This compared with the available labor force in the City of New York, the geographic jurisdiction of the union of approximately 30 to 35 per cent.

In this case, the government will deal both with intentionaldiscrimination involving preferential treatment of whites and some more subtle and on the surface neutral practices which the government contends have the effect of discriminating against minorities.

This is an industry that involves primarily the maintenance of heavy equipment. We will hear terms and talk of bulldozers and backhoes, of cranes of various sorts, of secialties such as welders, some equipment used in the industry will require licenses, most will not require licenses.

Despite the varied equipment and what to a layman might perhaps and would appear to be impressive equipment, the government case will show that there is no formal apprentice program for training of any sort such as exists in many other crafts in the contruction trades in New York. We will show that the industry historically trains people through on-the-job training but training that is so informal that one is heavily dependent on relatives, friendships and union contacts to progress in the trade.

Historically these unions actually started out

being predominantly almost Irish and Italian in ethnic representation and there have been changes lately and we will hear some evidence of recent changes. But those recent changes, we contend, have been completely ineffective and inadequate to remedy the effects of past discrimination and at present the discriminatory tactics continue.

We will find this to be a union or unions closely involved, closely knit. Officers have always been white and many have relatives in the union. We will hear from the chief officers of the union and from their business agents who control this employment. In terms of job referral, we will find that despite the very large size of the work for us in this industry, and here we are talking about Local 15 with about 6400 members at present and Local 14 with fifteen or sixteen hundred members, and despite the large size of the work force and variations in employment over the years, and employment conditions, there is no rigorous standardized method of referring people for jobs.

In fact, the key aspect of this industry we will show is that the job referral system, as well as the training system, is so informal and non-standardized that it lends itself to preferential treatment, sometimes by

intent and sometimes by effect.

In that respect we will hear about a day room, so-called, run by the unions. This day room is similar to what in many trades is called a hiring hall in which persons seeking work are referred out to work. We will also show that there is a difference in treatment of minorities in terms of membership to unions as well as the training and job referral.

The Court may be wondering what the difference is here between Local 14 and Local 15. They are both operating engineer locals, both operate under the same International Union constitution.

The government will show that although they do have different union charters, they are in effect sister unions or somewhat more closely, as Siamese Twins.

The 14 men operate similar equipment to Local 15, but sometimes and most often larger in size or perhaps on some different types of jobs. But they do all require similar skills. Some 15 men operate cranes requiring licenses in the City of New York. 14 men operate larger cranes requiring different licenses.

14 men receive higher rates of compensation than men in 15. Local 14 is smaller than 15 and in fact Local 14 has not grown in size since the 1940s despite the

growth in construction in the City of New York.

The primary way for people to gain admission to Local 14 is to gain experience by operating Local 14 equipment while being members of Local 15. The two unions share hiring hall facilities on two sides of the same room. Everywhere else in the country the trade jurisdiction of the two unions is included in a single local of operating engineers. New York is different or at least it is different in form. There are also barriers in New York to transferring between the two locals which we shall show, and one more difference, Local 15 has come up from almost no minority membership to presently about 7 per cent minority membership as compared with the far larger minority labor force in New York. Local 14 is somewhat different. It has only come up to about 3 per cent minority membership, even worse than Local 15.

In terms of the order of proof, we had intended to start today but will start Monday morning, following Mr. Maguire's testimony, with the presentation of a legally prima facie statistical case showing the difference between the minority representation of the union and the available labor force in the City of New York.

Our proof will primarily deal with census data on the work force and educational background of the people

available for work and a government witness who will be prepared to give an analysis of some of these census statistics.

THE COURT: On Monday?

MR. GLASSMAN: Yes, your Honor. Starting today, and again after the presentation of census statistics, the government will call union officers of Local 14 and Local 15. We will call the president of Local 15 and 14, business agents and executive board. Again, the business agents in this industry are the key people who do control employment and job referral.

From the officers we will deal with the history of the union, the type of work, equipment they work on, the system of training, referral and union membership as the union perceives it does or should work.

We will then hear from a number of contractors in the industry. They will testify as to their collective bargaining agreements with the union and the way men obtain work and also their relationship with the union in terms of obtaining men for employment.

Following the contractors the government intends to call government personnel who deal with contractor compliance and more specifically with the equal employment provisions of contract compliance and they will tell us

their efforts to enforce the hiring of minorities on federal and city projects. They will also discuss some of the problems they have had in this regard.

We will also call persons who have trained minorities and can speak to the method of training they use and qualifications of the men whom they have trained.

We will then proceed with some witnesses who will talk about their attempts to obtain jobs in the industry and union membership for qualified minorities and find out how they fared.

Following these witnesses, the government will call a large number of minority witnesses, people who in fact have been hurt, the government contends have been hurt, by the practices of the defendant unions.

These people will be testifying as to their background, their training, their efforts to obtain employment and efforts to get into the union. We will hear from these witnesses of a different system for recruiting, training, getting jobs, getting into the union, a different system that applies to blacks and Spanish surnamed individuals than applies to whites in the industry.

We will see how the informal preferential system operates to their disadvantage.

The government will present a cross-section

of witnesses, minority witnesses, who have been discriminated against. We will call both black and Spanish surnamed individuals in the union and black and Spanish surnamed individuals who have attempted to get in the union and then we will call several older minority individuals who had long years of experience and younger individuals.

Some have received on-the-job training, some have been trained abroad and some have gone to school and trained in the Army and will talk about the various types of training and reception they received in New York when they attempted to find work within the jurisdiction of the defendant locals.

The problems which will be presented by these witnesses, the government contends, result from illegal activity that must be remedied. Following the trial, of course, we will discuss remedies which we hope the Court will see fit to follow, including reform of recruitment, training, referral and union membership practices; perhaps hiring or referral ratios and other relief.

In terms of the Civil Rights litigation, the government feels that none is more important than the employment provisions of the Civil Rights Act of 1964. To think that truly qualified individuals, and we will

present evidence as to their qualifications, truly qualified individuals of different race or national origin cannot find employment, equal jobs, have an equal chance to support their families adequately, in New York in 1974, is a travesty on the system and our way of life in New York that must be cured.

Similar fact patterns to what we will hear at this trial can be found in other cases that have been brought in this very courthouse involving the construction trades in New York and the Court is referred to cases involving Locals638 and 46. We are prepared to proceed.

THE COURT: Do the defendants want to make any opening statement?

MR. KENNEDY: We will waive our opening.

MR. BRADY: We will waive, your Honor.

MR. DEVORKIN: Thomas Maguire, Sr.

THOMAS A. MAGUIRE, called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Maguire, are you currently employed?

A Yes sir.

Q In what capacity?

A President and business manager of Local 15, Operating Engineers; third vice-president of the International.

Q How long have you been president of Local 15?

A Since 1946.

Q How long have you been business manager?

A 1946.

Q And before you were president, did you hold any other office in Local 15?

A Vice-president.

Q How long did you hold that office?

A About, I would say, 10 years.

Q How long have you been third vice-president of the International?

A Since 1966.

Q What are the duties of the third vice-president

of the International?

A My duties?

Q Yes, sir.

A The duties are to take orders from the general president, getting assignments, hearing cases that come before the board, hearing officers; also attending board meetings four times a year

Q Doyou help formulate policy for the International?

A That is right.

Q Do you serve on various boards of the International?

A Executive board.

Q Are you fully familiar with the International business and policies?

A Pretty much so.

Q What are your duties as president of Local 15?

A The duties are to preside over the meetings as president, also to run the business affairs of the local union.

Q Do you help formulatepolicy for the local union?

A That is right.

Q Do you serve on any boards or in other positions as president of the local union?

A Executive board, president of the executive

board.

Q What are the duties of the business manager of Local 15?

A Preside over the officers, full charge of the local union.

Q Do you appoint any officers as business manager?

A Appoint the business agents, examining board.

Q What are the business agents?

A Business representatives.

Q What are their functions?

A What are their functions? Their functions are to take the complaints of the members, see that the contractors are well protected in getting a day's work from the men; anything that has to do with the running of the membership as far as the field work is concerned.

Q Are you also in charge of contract negotiations with the employer associations?

A That is right.

Q Do you also serve on various funds to which the local union is a party, such as the Joint Pension Fund and Welfare?

A I am a trustee of the Welfare and Pension Fund and trustee on the Vacation Fund, trustee on apprenticeship training.

Q And the Annuity Fund?

A I don't have one.

Q You don't have an Annuity Fund?

A No, sir.

MR. DEVORKIN: May I cross-examine this witness under Rule 43 as a hostile witness?

THE COURT: Yes.

Q Mr. Maguire, is Local 15 chartered by the International Union of Operating Engineers?

A Local 15?

Q Yes.

A Since about 1937.

Q What is the geographic jurisdiction of Local 15?

A The five counties of the City of New York.

Q Will you just briefly describe for us the general craft jurisdiction of Local 15 pursuant to its charter from the International?

A I don't quite follow you. When you say, "craft jurisdiction", what do you mean by that?

Q Well maybe I should say the trade jurisdiction.

A Do you mean --

Q The kind of work that Local 15 does in the City of New York, generally speaking.

A What the men do?

Q Yes.

A The men of Local 15?

Q Yes.

A They operate bulldozers, hydraulic backhoes, graders, scrapers, loaders, all minor equipment -- pumps; install well point systems; take care of -- we do all the welding on the streets of the City of New York for Con

Edison and Brooklyn Union for contractors given such work, which the men hold licenses for and tested by the utility companies.

The men also on pil-driving equipment do all the welding for the dock builders on piling -- anything but structural steel that is used in heavy construction work which the men are licensed by the City of New York.

Q What kind of license?

A City of New York welders' examination given by the City of New York.

Q Are all welders working under jurisdiction of Local 15 licensed?

A Every one of them --

Q By either the City or Con Ed?

A If you will let me finish that.

Q I am sorry.

A They are licensed by Con Ed or Brooklyn Union license, the City of New York license or a State of New York license which is a very tough examination. That is a license that the State issues for doing their road work when it comes to building any roads in the State under the State's jurisdiction. It is a special license, much tougher license than the City examination.

Q Would it be fair to say that your men work

either on building construction or heavy construction sometimes known as road work?

A They don't do any welding, if that is what you mean.

Q But generally speaking the men of Local 15 do either building construction or heavy construction work?

A Yes.

Q Local 15 also has branches, is that right?

A Yes.

Q What are those branches?

A The branches are 15A, 15B, 15C and 15D.

Q Would you briefly tell us what the trade jurisdiction is or what the men in each of those branches does in the City of New York?

A 15D comprises the men who are organized that do the maintenance work at the three race tracks in the City of New York -- in the State of New York, namely, Saratoga, Belmont, Aqueduct -- and prior to that Jamaica when it was running.

These men are men that work all year round maintaining the race tracks and doing maintenance work -- nothing to do with cashiers or sellers or tickets or anything like that -- maintenance employees.

15C are our shops -- both equipment shops

which are dealer shops, people that sell the various equipment, and contractor shops who hire the men to fix their equipment.

15B are the field engineers, such as the chief of party, instrment men and rod men, there are three in a party, who do all the surveying work for either the heavy construction or the building.

Q What about 15A, sir?

A 15A, that is the same as 15. When a man comes in and gets qualified as a 15 man, he is put into 15A for a period of three years. He automatically -- it is the same initiation fee, and he is automatically transferred over into 15.

There is no difference in the quality of the work he does or the initiation fee or anything.

It is a charter that we keep so that if anything should happen that we are out organizing again in another field, that we have that charter available.

Q Are these branches chartered by the International--

A Yes, sir.

Q -- as branches of the local?

A Yes.

Q Under the constitution as branches?

A Yes.

Q There is one set of bylaws for Local 15, is that correct?

A Yes.

Q And you have one set of officers who serve all branches; is that correct?

A That is right.

Q Are the dues different for each of these branches -- I am sorry, the initiation fees?

A Yes.

Q Could you tell us what the different initiation fees are for the branches, approximately?

A Well, there is a difference between -- the initiation fee in 15 and 15A is $200.

I believe in 15C it is about $70, thereabouts, approximately.

15B, I think it is $50.

And 15D is about the same, I think -- $70, something like that.

Q Does Local 15 have collective bargaining agreements with either employers or employers' associations in New YOrk City?

A Yes.

Q About what percentage of the employers or work done, building or heavy construction work is done

under union contract, so far as you know?

A In the City of New York?

Q Yes, in your trade.

A So far as our trade is concerned?

Q Yes.

A I would say anywheres from 95 to 99%.

3.2 Q Now, is there also another local in New York City of operating engineers?

A Yes. There are several local unions in New York City of operating engineers.

Q Of operating engineers?

A Yes.

Q What are they?

A Local 14, Local 30, Local 98, Local 94, Local 211, Local 295.

Q Except for Local 14, do any of those do the same work that your unions do?

A No. There is one local that does -- Local 14.

Q What is the geographic jurisdiction of Local 14?

A Local 14 has the same jurisdiction as Local 15, the five Boroughs of the City of New York.

Q Now, is there also a joint board of Local 14 and 15?

A A joint board?

Q Yes.

A I don't get your question. I don't know what you mean by a "joint board".

Q Is there any group known as a joint board, joint executive board?

A No, sir.

Q Any kind of joint board?

A No, sir.

Q Has there ever been?

A No, sir.

Q You have never served on such a board?

A No, sir.

Q And the unions have never, pursuant to the constitution of the International, had such a board?

A No, sir.

Q Would you say that you are fairly close to Local 14?

A Very close.

Q And Local 14 and Local 15 have the same charters from the International, do they not?

MR. KENNEDY: Objection unless he has seen 14's charter, or the Government wants to introduce it in evidence.

THE COURT: I assume they are going to be in

evidence, aren't they?

MR. DEVORKIN: Yes, sir.

THE COURT: The charters?

MR. DEVORKIN: They will be, your Honor.

THE COURT: Well --

MR. DEVORKIN: The man is an expert in this field, your Honor.

THE COURT: If he knows. Counsel says if he knows he can answer it.

Q That is my question, Mr. Maguire, if you know the answer to it. Do you know whether Local 14's charter, except for the equipment, is the same as Local 15?

A The charters are issued by the International with the equipment spelled out what they operate right on the charter, if that answers your question.

Q And except for the equipment the charter is the same?

A That is exactly right.

Q Now could you briefly describe for us the difference between the trade jurisdiction of Local 14 and the trade jurisdiction of Local 15 as you understand it?

A The trade jurisdiction?

Q What do Local 14 men do versus what Local 15 men do?

A What they operate, is that what you are saying?

Q Well, roughly what they do that is different between Local 14 and Local 15.

MR. KENNEDY: Your Honor, I am going to object on behalf of Local 14. He is not a member of that union, and if Mr. Maguire is to testify as an expert for Local 14, then I wish to state --

THE COURT: I understand we are going to have somebody from 14 anyway.

MR. KENNEDY: Yes, your Honor.

THE COURT: Why bring it out through Mr. Maguire?

MR. DEVORKIN: Your Honor, may I be heard on that?

THE COURT: Yes.

MR. DEVORKIN: Mr. Maguire, of all the witnesses you are going to hear, has perhaps in his industry the longest in the City, knows the most about it, has had extensive experience both with Local 14 and 15 and has been International president.

THE COURT: That is all very true, Mr. Devorkin, but if you do not have anybody from Local 14 to testify to what Local 14 says the trade jurisdiction was, that would be one thing; then maybe you could qualify this gentleman to tell us, but since you will have somebody

who is an officer of that union or local, why not get it from him and not ask this gentleman to testify about that union.

You may show that he is generally familiar with it, but I don't know why we have to go into that.

MR. DEVORKIN: I am not seeking to simply show what it is. I think our proof possibly is going to rely on the fact that there are different impressions and what the differences are. Mr. Maguire has a different impression perhaps of what Local 14 is --

MR. BRADY: I object to that.

MR. DEVORKIN: Excuse me, and in addition to that the men that come into Local 14 and 15 -- the minorities that seek work are given different impressions of who they have to see to do what kind of work.

THE COURT: Well, we are not talking about who they have to see. You are asking him to say what the trade jurisdiction is of Local 14. He is familiar with Local 15.

MR. DEVORKIN: All right, I will move on, your Honor.

THE COURT: If you have an officer available from Local 14, let us not waste time.

BY MR. DEVORKIN:

Q Mr. Maguire, do Local 14 men have generally a higher rate of pay than Local 15?

MR. KENNEDY: Objection, your Honor.

THE COURT: Well, he can answer some of these questions.

A I would say --

THE WITNESS: Shall I answer that, Judge?

THE COURT: Yes.

A I would say the rate of pay is higher in Local 14 in some cases. In other cases it is on an even par.

Q Mr. Maguire, let me hand up to you what has been marked as Plaintiff's Exhibit 62 --

MR. DEVORKIN: Your Honor, at this time I would be prepared to give you a copy of all our exhibits, if you prefer that, or would you like to have them one at a time?

THE COURT: Well, how many exhibits do you have?

MR. DVORKIN: 62 right now, 63 right now.

THE COURT: All right, hand them up.

I assume counsel has no objection.

Are these exhibits agreed on by counsel? I do not want to receive disputed documents.

MR. DEVORKIN: I am uncertain of what the

defendants agree on or do not agree on. I think I will hand them up one at a time.

THE COURT: All right.

[Document handed to the witness by Mr. Devorkin.]

Q Would you examine that, Mr. Maguire?

A Pardon me?

Q Would you examine that?

A [After examining.] Yes, pretty much so.

Q Would it be fair to say that those pictures accurately reflect the type of equipment described thereon?

A The equipment described here -- is that what you want?

Q Would it be fair to say that the equipment described here is what it purports to be -- in other words, when there is a picture of a crane, it is a crane.

A It is a crane, yes.

Q When there is a picture of a bulldozer, it is a bulldozer, and so forth?

A Yes.

3.3 Q And this equipment is all used by Local 15 men; is it not?

A Not all by 15.

Q 14 and 15?

A Yes.

MR. DEVORKIN: I move the introduction of Plaintiff's Exhibit 62, your Honor.

THE COURT: Any objection?

MR. BRADY: I have no objection.

*** [Plaintiff's Exhibit 62 marked in evidence.]

BY MR. DEVORKIN:

Q Mr. Maguire, I would like to hand you what has been marked as Plaintiff's Exhibit 40E for identification. [Handing.]

[The witness examines].

Q What is that document, Mr. Maguire, if you know?

A This is an agreement between the General Contractors and Local 15, 15A and 14 of the Operating Engineers, heavy construction.

Q What is the date on that agreement?

A July 1, 1969 to June 30, 1972.

MR. DEVORKIN: I move the introduction of Government's Exhibit 40E,your Honor, into evidence.

MR. KENNEDY: No objection.

MR. BRADY: Local 15 has no objection, your Honor.

THE COURT: Received.

** [Plaintiff's Exhibit 40E now marked in

evidence.]

BY MR. DEVORKIN:

Q Mr. Maguire, are you familiar with the fact that the City of New York licenses some men to operate equipment in the City?

A Pretty much so.

Q And today the City of New York has three kinds of licenses, does it not, for lifting equipment an A, B license and C license?

A Yes, they have four licenses.

Q What are the names, and the others are steam licenses --

A Portable steam licenses.

Q There is a steam license, and A, B and C and AMP --

A Any motor power except steam.

Q What does an A license allow a man to do?

A That is for the booms of a particular length. A B license are for booms of a lower length. A C license --

Q Well --

A Do you want me to respond or not?

Q Yes.

A C license is for the cherry pickers -- the

roustabout cranes.

Q And an A license is the boom up to 200 feet, is it not, and the B license is over 200 feet, is it not?

A The A license is what?

Q Up to 200 feet boom length, and the B license is over 200 feet, or unlimited, is it not?

A I am not sure which is which -- whether the A is above or the B is above -- one or the other.

MR. KENNEDY: Your Honor, it is a matter of statute, so if the U. S. Attorney wants to offer any section of the Administrative Code that describes it, that would be satisfactory.

THE COURT: That would be a good idea.

BY MR. DEVORKIN:

Q I show you Plaintiff's Exhibit 63, which is a copy of the Code --

THE COURT: No objection, I take it.

MR. BRADY: No objection.

MR. KENNEDY: Your Honor, I do have an objection. I think there is a portion left out. It has to do with the age qualifications. In other words, you will see, your Honor, by looking at the exhibit that it refers to B26 - 1.2.

THE COURT: This will be taken subject and

received also with that other paragraph that you mentioned.

MR. KENNEDY: Thank you kindly.

THE COURT: Will you supply us with a copy, introduce it in evidence and give it to the other side.

MR. DEVORKIN: Yes.

[Plaintiff's Exhibit 63 marked in evidence.]

BY MR. DEVORKIN:

Q Now, Mr. Maguire, do you have a copy of the agreement that we are talking about right now, between 14, 15 and 15A in front of you, Government's Exhibit 14E? Do you have that there?

A Yes.

Q Will you turn to Page 15 of that agreement.

[The witness examines.]

Q On Page 15, Section 6, wages, Local 14 men are referred to as operating engineers, are they not?

A Yes.

Q And on Pages 19, 20 and 21 Local 15 and 15A men are referred to as junior engineers, maintenance engineers and apprentice engineers, are they not?

MR. KENNEDY: YOur Honor, the document speaks for itself.

MR. BRADY: That is my objection.

THE COURT: He may want to base a question on it.

We have already had testimony that these people first go into that union for three years, is that right?

MR. BRADY: No, your Honor, that is Local 15 and 15A.

Q Local 14 men are referred to in the contract as operating engineers, is that correct, Mr. McGuire?

A They are all operating engineers.

Q Will you take a look at Page 15 of that agreement.

[The witness examines.]

Q The first piece of equipment listed under A, Local 14 Operating Engineers, is backhoes, power shovels, steel erection.

If you know, are the men that operate those pieces of equipment required to have City licenses?

A I do know that on steel erection they need City license.

Q For what? For what kind of equipment?

A Do you have a copy of the license, the City license? You should have it. You can read it. It is plain as anything if you read it.

Q Is it your impression that men who work backhoes are required to have a City license?

A Is it my impression?

Q Yes.

A No.

Q And power shovels, are they required to have a City license?

A No.

Q And gradealls, are they required to have a City license?

A No.

Q And cranes with digging buckets?

A Cranes?

Q Clam shells.

A Yes, that is a crane -- hoisting equipment.

Q Well, a crane with a digging bucket, is that required to have a license -- not hoisting equipment -- or a crane with a clam shell or a drag line is that required to have a City license?

3.4 THE COURT: May I interrupt? There must be a law that says with respect to these various items that licenses are required or that a license is not required. I don't know that we have to waste the time of the witness --

THE WITNESS: That is right.

THE COURT: -- because the law is what controls,

not what he says.

Why can't counsel get together and agree as to these various categories of what ones require a license and what ones don't.

MR. KENNEDY: Your Honor, we had intended to call people from the City who do the licensing -- I am sure they will be able to tell us which pieces of equipment are required, because they give out summonses to the operators if they don't have a license when they are supposed to have one.

MR. DEVORKIN: Your Honor, I think Mr. Maguire does know the answer. I really do not want to wait for counsel to prove that. The law is not specific --

THE COURT: Well, you have the gentleman here. You can ask him what should be controlling. If you want to take up the Court's time and counsel's time, go ahead.

MR. DEVORKIN: I will be brief, your Honor.

BY MR. DEVORKIN:

Q Cranes that do digging as opposed to lifting -- cranes that have a drag line or a clam shell or a digging bucket do not require the men operating it to have a license, do they?

A I would say in my own words, no.

Q And what about a man operating a pile driver?

A If it has a steam boiler on it, he is required to have a license.

Q But otherwise not.

A That is right.

Q And a man operating a tunnel mucking machine?

A No.

Q Back-filling machine?

A No.

Q A paver?

A No.

Q A compressor?

A No.

Q A pump?

A No.

Q A well point pump?

A No.

Q A tugger machine?

A No.

Q Any drilling machines?

A No.

Q A roller?

A No.

Q A grade mixer?

A No.

Q A locomotive?

A No.

Q Now, does any of the equipment that Local 15 men operate require a license to operate that equipment?

A Just the cherry picker.

Q Would you tell the Judge what a cherry picker is.

A Well, you saw these cranes -- they call them roustabout cranes, like they use on the waterfront. Today they make them bigger. They are hydraulic -- they have hydraulic booms on them, one-man operated.

Q And Local 15 has no requirement for membership that a man must have a City license, does it?

A No.

Q Do you know how many cranes there are in the City of New YOrk?

A What kind of cranes?

Q Any lifting cranes that lift weights.

A There are so many different things they call cranes. I don't know what you mean.

MR. BRADY: Objection, your Honor. If counsel is talking about the cranes within our jurisdiction, there are many, many cranes operating, and I assume hydraulic cranes are not under the jurisdiction of this

union -- if he can clarify that.

Q Any crane in the City of New York.

THE COURT: Are you talking about cranes under the jurisdiction of tne union?

MR. DEVORKIN: No, sir.

Q Do you know how many cranes are operated in the City of New York, or how many cranes there are in the City of New York?.

A At the present time?

Q Yes.

A I wouldn't know.

Q Do you know how many cranes are operated in any one day roughly in the City of New York, would you estimate?

A It is pretty hard to estimate that.

Q Would it be more than 100 or less than 100?

A Oh, I would say more than 100.

Q More than 200 or less than 200?

MR. BRADY: Your Honor, objection. Obviously this is not within Mr. McGuire's knowledge.

THE COURT: It seems to me there must be some other source of the information. He probably knows the number of cranes operated by his union. He does not know about all the cranes that are operated by other unions.

A You see, there are so many different kinds of cranes.

Q As to the cranes operated by either Local 14 or 15 men, could you tell us roughly how many cranes there might be in any one day operating in the City?

A Oh, probably a couple of hundred.

MR. KENNEDY: Your Honor, I am going to object to that because I think this is nothing more than a guess on this man's part, and that is not what he was asked.

THE COURT: He says probably 200 -- did you?

THE WITNESS: Probably around a couple of hundred.

Q You said Local 15 was chartered in 1937; is that right?

A As Local 15.

Q Do you know when Local 14 was chartered?

A About the same time.

Q Who was Local 15's first president?

A A fellow by the name of Joe Delaney.

Q Does his son now hold office in the union?

A He has two sons holding office in the union, one in Connecticut and one here with me.

Q And the one here with you, what office does he hold?

A Business representative, representing the shop men.

Q 15C?

A Yes.

Q What was the predecessor union to Local 15?

A What?

Q Which union, if any, preceded Local 15 in this trade jurisdiction?

A The predecessor of that was Local 130.

Q What about Local 184?

A Excuse me, 130A.

MR. BRADY: Again at this point, your Honor,

this case concerns Local 15 and Local 14.

THE COURT: This is historical, if it has any historical value.

Q Was it 184A also?

A 125A before 130A and 125A and 140A was the original charter.

Q Then 130A was the last one?

A 184, 125, 130, all A's.

Q What trade jurisdiction did those unions have, 184A, 125A and 130A? What was their trade jurisdiction?

MR. BRADY: Objection, it has not been established that Mr. Maguire is knowledgable as to those locals.

THE COURT: He can answer it. If he can't answer it, he can tell us he doesn't know.

MR. CORCORAN: I object. This has no probative value as to the old unions. We are concerned with this case.

THE COURT: Objection overruled.

Q Did the men who worked in 184A or 125A or 130A -- what did they do in those days?

A 184 we had only steam. That was back in 1920.

Q Did you operate steam equipment?

A Yes, sir.

Q Cranes? What kind of steam equipment?

A Nothing but steam on all equipment.

Q You operated all steam equipment?

A In those days, yes.

Q Did you operate above ground or below ground?

A Above and below. At the curb level, below.

Q Did you at any time operate on the buildings?

A No, sir.

Q Who did that?

A A charter issued by the International in existence, 403. They did from the curb up.

Q Was there a Union 184?

A Yes, sir.

Q What did they do?

A They did from the -- the heavy construction work.

Q Who did they represent, 184A?

A It was our local. 184 was the operators of the equipment. We had the firemen at the time and 184, that was the only thing we had.

Q You had the firemen?

A That is right.

Q And 184 was the operators?

A Operators.

Q The fireman, what did he do?

A What did he do?

Q Yes, sir.

A He kept the fire going in the boilers.

Q He helped the operators?

A No, he didn't have to. He pulled on a rope on a bucket and everytime he walked around, and he better not miss either or he got the gate.

Q Do you know why Local 15 was given its own charter by the International?

A That was a long story. This was a Court case under Judge Hammer back in the early thirties. When Local 14 got their charter they amalgamated Local 403 into 130 and made it one local called 14 and we got our own charter, engineers' charter, Local 15 because we took in all the maintenance men. They broke away from the pipefitters at the time.

We were given an engineers charter and from this day on that is the way it has been.

Q Would it be fair to say that Local 15 didn't want to be gobbled up by Local 14?

A Yes, we didn't. That was one of the big reasons because back in the early days Local 184 was looking to take the fireman and everything. Delaney

was the founder of Local 144A.

Q It was a matter of politics, International Union politics that gave you your charter?

A I believe that is just what it was.

Q And isn't it true that this is the only geographical jurisdiction in the country under the International Union --

A That is right.

Q Le me finish my question.

Is it the only place in the country where there are two operating engineers locals doing the work of 14 and 15? Otherwise it is always in one local, is that not true?

A As far as I know, this is the only City, the only place as you put it in the country under our International that has two charters of hoisting and portable within the same city.

THE COURT: Why don't we take a short recess.

[Recess.]

Q Mr. Maguire, are you familiar with the constitution of the International Union of Operating Engineers?

A Yes, pretty well.

Q I would like to hand you a copy of that

marked as Plaintiff's Exhibit 5D.

Is that the constitution of the International Union of Operating Engineers effective April 1972?

A Yes.

MR. DEVORKIN: I would like to move 5D into evidence, your Honor.

MR. KENNEDY: Local 14 has no objection.

MR. BRADY: Local 15 has no objection, your Honor.

THE COURT: Received.

[Plaintiff's Exhibit 5D for identification received in evidence.]

Q Will you turn to Page 36, Mr. Maguire, where it reads, "B, hoisting and portable engineers craft jurisdiction."

Do you see that?

A Yes.

Q 14 and 15 were chartered under that provision, were they not?

A Yes.

Q Are you also familiar with the apprenticeship and apprenticeship programs in the International constitution?

A Pretty well.

Q Would you say that the position of Local 15 is in accord with that International constitution?

MR. BRADY: Objection unless there is a specific provision that counsel is referring to.

MR. DEVORKIN: I have a right to examine the witness.

A I don't follow you.

MR. DEVORKIN: He indicated he was familiar with the constitution and I would like to get an answer.

Q Mr. Maguire, are you familiar with the membership, all the membership and all of the apprenticeship provisions of the International constitution?

A I am pretty much familiar with the apprenticeship provision set up by the International, yes.

Q And the membership provisions?

A And the membership provisions.

Q Is the position of Local 15 in accord with those provisions of the International?

A As much as I can see, yes.

Q Would you turn to Page 41 and 44 and take a look at 41 and 44?

THE COURT: Talking about Page numbers?

MR. DEVORKIN: Yes, Article 14, Section 5; Article 14, Section 7.

Q Would it be fair to say that normally maintenance people and oilers and other helpers and mechanics, where present in the local union of the Operating Engineers are chartered, if at all, as branches of those locals? Do you follow my question?

A I don't follow.

4am-2

Q If there is a local of the union of the operators and it has mechanics and maintenance people, normally the mechanics and maintenance people would be in that local or they might have a branch of that local; is that correct?

A They could be.

Q Mr. Maguire, how did you first get experience in the Operating Engineers trade in New York?

A Back in 1926 I was a pickman, and that is the fellow that carried coal to the steam shovel. Then we had a long hose going to a hydrant. We had the wheel shovels in those days running on plates. By the end of the day you were carrying the coal probably a half a mile from where the horse truck dumped it, a ton or two of coal and put it in a bucket and sent it up to the fireman.

And on his lunch hour,you got up there and relieved him, fired the boiler and tended to the water,

pulled the rope while he had his lunch and that is how you got your experience. And when he would have work to do on the engines, you went up and helped him and that is how you became --

Q Did you become a fireman?

A A fireman, that is right.

Q How long did it take you to become a fireman?

A I was a pit man for about two years.

Q Then you became a fireman?

A In 1928 I joined the union as a fireman.

Q How did you get into the union?

A In them days it was no problem to get into the union because it was an organizing drive. There wasn't very much union around in those days. The only thing was I union, I think in the building line, was a few unions, brick layers, operating engineers.

Q Which local did you join in 1928?

A 184A.

Q Did you also stay as a fireman od did you become an operator?

A I then became an apprentice engineer. We went from steam then onto the gas air machines and the contractors wouldn't put a man on each gas air machine so the union and the contractor got together back around

the early 1930's and they decided that one man would take care of three machines. I happened to be one of those fellows that took one of those jobs and from there, why --

Q What was your position in that job again?

A Junior engineer.

Q How did you get to be a junior engineer?

A As I say, I was under our charter then. We went out and we had a charter, Joe Delaney, and we had a business agent then. Through their negotiations they were successful in getting one man on the three machines' and I was picked to be one of the men on the three machines, to take care of them.

Q You had been a fireman before that?

A Yes.

Q Did you ever become an operator or an engineer as opposed to a junior engineer?

A No, I got my steam license when I joined the union in 1928. The latter part of 1928 I got my steam license. I run derricks, steam derricks. I relieved the engineer, but I never transferred into the parent, the other local, 184, but stayed in 184A.

Q You were helping the engineer on the machine at that time?

A I was the fireman.

Q As the fireman, when he wasn't operating you might get up and operate?

A You would let the laborer come in to fire the boiler and I would go up and relieve him, give him a blow, run the derrick.

Q That is how you learned to operate it?

A That is right.

Q Did you get a license on the derrick?

A Yes, -- I got a license on the boiler, steam license.

Q Did you ever --

A The license went with the boiler, on the boiler.

Q You didn't need a license for the derrick?

A No, the boiler.

Q When did you actually become an engineer, transfer over as an engineer as opposed to a junior engineer? Did that ever happen?

A Yes. As soon as we got the charter of Local 15, my book was transferred over from 130A into 15.

Q You were an operating engineer in 15 then?

A Yes, that is right.

Q In those days the operating engineer worked a derrick?

to operate it?

A Yes, that is right.

Q Sometimes come in before work and learn?

A Well, to become a fireman what you did is you got up at six o'clock in the morning and got in early, got the steam up and run the rig.

Q Was there an operator to show you?

A Before the operator got in, run the rig. They done the same thing, the loaders and bulldozers, got out early in the morning and run it.

Q The operator wouldn't be there?

A Sometimes he would come out with you on his own time.

Q What about after the day was done, would you do it then too?

A Sometimes.

Q Would you say that is how most men learned to operate that way?

A Not most of them. In them days it was a different thing than it is today. You didn't have the majority of the machines and didn't have the majority of the men that you have today and the equipment was altogether different in them days.

The equipment was in the $7,000 - $8,000 bracket.

A No, I never run a derrick, no. The 15 charter didn't run derricks.

Q What did you do as an engineer in 15?

A I was a maintenance man --

MR. BRADY: He testified he operated as a fireman.

THE WITNESS: That is right. I was a maintenance engineer in Local 15.

Q After it was 15, what did you do?

A I became a welder, a certified welder.

Q Did you ever actually on a daily basis operate equipment as opposed to maintenance?

A Yes, I operated equipment, operated dozers, loaders.

Q Did all of the maintenance engineers do that?

A No, not all of them.

Q Many of them?

A A good part of them did, yes. A good part of them came out of the shops.

Q They didn't have maintenance do these, they would get up and operate equipment?

A That is right.

Q How would they learn to operate?

A That is the way they learned, on their lunch hour.

Q What would happen, the operator showed them how

Today a loader or a big piece of -- a loader today costs a man a quarter of a million dollars.

Q But most of the operating people that were actually operators were in the operators union, did they learn to operate the same way you just told us about?

A In them days.

MR. BRADY: That was asked and answered.

THE COURT: Yes, he said yes, in those days.

A Not today.

Q How did the men find work in those days?

A Well, it was pretty hard. You got your own jobs more than you do today. A contractor would call you. You got laid off in them days, you pretty near worked for the same contractor all the time. If he had work you worked, and if he didn't you didn't and if he liked you he would hold you on and keep you in the yard.

Q If you needed work or were laid off on a job, when a job finished, how would you go about finding work?

A You wouldn't get any work until probably the business agent, if he found a job or something, he might call you in them days.

Q Would you talk to your friends?

A No, very seldom you would get a job from your friends. They didn't have work themselves. They were

working for steady contractors.

You see, we only had a local and the local was so small it wasn't even worthwhile, talking about three or four hundred men. This is all we had.

Q Did people form crews and work together as a crew?

A Yes, definitely.

4.3 Q You might go from job to job?

A That is right.

Q Sometimes you would learn about new jobs by word of mouth?

A That is right.

Q What was the ethnic character of the union in the thirties --

A What was the ethnic --

Q What was the ethnic character?

A Well, talking about the --

Q Mostly French or German or Irish?

A I will give you a rundown on that. Alongside of me when we were building the Concourse Subway there was a man named Warren, a colored boy fired the boiler alongside of me.

Q Mr. Maguire, would you answer my question, the question was what --

A You asked me ethnic, and that is ethnic to me.

Q Of the union.

MR. BRADY: That is correct.

A [continuing] I just told you, he was a union man.

Q I didn't ask about a particular man, but the ethnic background of the entire union at that time.

MR. BRADY: There is nothing to prove that Mr. Maguire knows the ethnic background of the entire union.

THE COURT: He can't answer a question that he doesn't know but he can answer questions relevant that he knows the answers to. Let him say he doesn't know.

MR. DEVORKIN: Will you read the question.

[Question read: "What was the etnic character of the union in the 1930's?"]

A We had blacks in the union at that time.

Q Sir, wasn't the ethnic character of the union in the 1930's about half Irish and half Italian?

MR. KENNEDY: By extraction or citizens?

A No, it was not, probably 75% Italian.

Q And the rest was Irish?

A No. They weren't all Irish.

MR. BRADY: Objection, same objection that

Mr. Kennedy made. Is he talking about American citizens or immigrants?

THE COURT: We know what this case is about.

MR. DEVORKIN: May I have a moment, your Honor?

Q Mr. Maguire, do you remember having your deposition taken on November 20, 1973?

A Yes.

Q Do you remember, referring to Page 16 of that deposition, Government Exhibit 17 being asked this question:

"Question: How could you go about changing employers in those days?

"Answer: Change from one employer to another?

"Question: Yes. Let's say work got slow with the one you were working with.

"Answer: I can only remember that myself, and it happened with the other fellows, too -- I guess half of them were Irish, the other half were Italian, and there wasn't too many of them."

Do you remember that question and answer?

A Yes.

Q Was that true when you made it?

A That is true, yes. I would say that. 75% Italian and 25% Irish. I don't know what the other

backgrounds were, Polaks or German or what they might be.

Q Was it an open shop or closed shop?

A No, we had a union shop.

Q A union shop in those days, what did it mean?

MR. KENNEDY: Can we have a time fixed, talking about the early thirties?

THE COURT: Yes, I think we should have a time.

Q In 1935, Mr. Maguire.

A Yes.

Q Better yet, let us take when Local 15 was chartered, in 1937, I believe.

Was there an open shop or a union shop or a closed shop?

A We had a closed shop.

Q What did that mean?

A Strictly union.

Q What did it mean?

A You could only hire union men.

Q How long did that stay in the industry?

A Until the law was changed.

Q When was that?

A I don't know. In the forties?

Q 1948?

A Before then.

Q The Taft - Hartley Law changed that?

A Yes.

Q Until then this union had a closed shop with its employers?

A Yes. Then we went to the union shop and the law was changed to a union shop.

Q What is a union shop?

A A union shop is that the employer can hire whom he sees fit and after a certain time, in the construction field, a short-term job he is given seven days to join the union and no more than thirty days.

Q Who gives him the seven days?

A The union.

Q Then he has to join the union?

A Yes. On the short-term job and thirty days on the long-term.

Q You have that provision in all your contracts?

A I believe that is the law.

Q And there is a provision just like that in the contract?

A That is right, I would say there is.

Q Is that provision called the Union Security Clause?

A That is right.

Q And that protects the union?

A The men, the union and everybody.

Q It protects the man, too?

A That is right.

Q So that he can join the union?

A That is right, no question.

Q Do you still have many men in your union that worked in this trade in the 1930's and 1940's?

A Yes.

Q You said that Branch 15 and 15A of Local 15 were the operators and the outside maintenance people I believe, right?

A Yes.

Q What are the categories within 15 and 15A? In other words, are they junior engineers and maintenance engineers?

A That is right.

Q And apprentice engineers?

A No. The apprentice engineers would be the ones that are going to the schools. That is the apprentice engineers today.

Q The agreements do have a category called apprentice engineer?

A I think you would find in the -- that agreement

you have here so that is the 1972 agreement. We have an agreement that is 1972 to 1975. Haven't you got that agreement? That agreement is outdated.

Q Did you receive a subpoena to testify today and produce certain records? It said you should have produced those documents?

MR. BRADY: The subpoena was returnable on the 16th for records as I recall.

Q Mr. Maguire, are you telling us there is no longer an apprentice engineer category?

A It is junior engineer now.

THE COURT: Can't we get the most up to date?

Q Except for the most up to date one, Mr. Maguire, you had a category in all your contracts with Local 15, 15A that was called apprentice engineer?

A Prior to that, that is right.

Q He might not be an apprentice, there was a category called that?

A That is right.

Q There is a difference in pay for each of those three categories?

A Yes, that is right.

Q Do maintenance men, mechanics and operators get the same rate?

A About the same rate, that is right.

Q If they are outside?

A That is right.

Q And to the men in 15A, they do the same work as the men in 15?

A That is right.

Q Exactly the same?

A That is right.

Q There can be operators in both?

A Same work.

Q And now people spend three years in 15A?

A And automatically transfer over.

Q And they don't pay any more fees?

A Not a nickel.

Q Has it always been that way?

A It has been that way for the last ten, twelve years.

Q How long was it before?

A The reason for that, if you want me to explain it a little I will, the reason is around the country some of the local unions weren't letting their branch people vote in the elections. We always let everybody vote but some local unions didn't.

And it was then that the Executive Board changed

the constitution and it was to let every branch member vote and if you didn't do it they got them all in the parent body.

Q The International changed it?

A Forced them to do it, that is right.

Q In those days were the majority of your 15, 15A men members in 15A?

A Yes, that is right.

4.4 Q When did that change?

A It changed as soon as the general executive board and the general president through meetings and the general executive board and the conventions ruled that after the Court cases were tried and these elections around the country, where the local union did not allow their branch members to vote, they only had a minimum of the membership in the parent body and they voted and that is when that was done away with. But as I say, we never had that problem, we let everybody vote, all the branches voted in 15 from its inception.

Q So years ago who was in 15A, what kinds of people?

A The same people in 15 today. The same people, just book work, just transferred them over.

Q Why up until ten years ago was a majority of

your people in 15A?

A As I told you, there was no reason for us to doing it whatsoever, no reason for it because they all voted. We had nothing to hide in it. But as I say, some of the locals were doing it for a purpose.

Q 15A wasn't an apprentice branch for 15 in those days?

A No.

Q Never has been?

A No, never.

Q Wasn't there a time perhaps some ten or fifteen years ago when 15A men were the oilers in the union?

A No. 15 men were oilers, 15A were oilers, sure.

Q That has always been the case?

A Yes; never different.

Q Who are the current business representatives for 15?

A Who are they?

Q Yes, sir.

A Got ten of them.

Q For 15 and 15A, not the branches, just 15 and 15A.

A Tom Gerry, my son --

Q What is your son's name?

A Tom, Jr., Tom Gerrity, Frank Cuomo, John Murphy

and Dan Murphy.

Q Now, 15B, that is maintenance work out at the track, right?

A B?

Q B.

A That is right, for the tracks.

Q Run some equipment out there to maintain the tracks?

A That is right, and maintenance work; running equipment and maintenance work.

Q You have organized that union fairly recently?

A No, that was organized back when they built the new Aqueduct Racetrack. How long ago was that, back in the sixties?

Q But it is newer than the others?

A Yes, that is right.

Q What job categories do they have in 15B, if you know?

A Job categories?

Q Yes.

A They have Maintenance 1, Maintenance 2, Helper 1 and Helper 2.

Q Handyman, too?

A I think we done away with that. That was done

away with.

Q That is Helper 1 and 2, they are below Maintenance 1 and 2?

A That is right.

Q Who is the current business representative for 15B?

A Tom Gerrity takes care of that.

Q Not Delaney?

A No, he doesn't go into the tracks. Tom Gerrity and John Murphy take care of the tracks.

Q The business representative is sometimes called delegate or business agent; isn't he?

A They did that years ago. We call them business representatives.

Q Business agent do you ever call them?

A Business representatives.

Q 15C, these are the inside maintenance people, isn't that correct?

A Shop people working on heavy equipment.

Q How did 15C originate?

A We organized that back in 1936.

Q The equipment dealers first?

A Organized the equipment dealers first, that is right.

Q What did the dealers do?

A Well, dealers sell the Caterpillars.

Q Maintenance shops that service their equipment?

A No, not only maintenance shops but sell the equipment and new equipment and have it under warrantee and we have men go out while it is under warrantee.

Q They have men working in the shop and sometimes they go out to the site?

A To keep it under warrantee for the time it is.

Q When did you organize the contractors' shops?

A About sometime after that, that was around between then and 1940 I would say.

Q Wouldn't it be 1948?

A It could be.

Q The contractors' shops are shops where the contractors actually own the equipment?

A That is right.

Q And does the maintenance in its own shop?

A That is right.

Q A big operation generally?

A It was too costly to send it into the dealer so he put up his own shops.

Q What are the current job classifications of 15C men? What kind of men are in 15C?

A In the dealer shops they have Maintenance 1 and Maintenance 2, Helper.

Q Is it sometimes called Mechanic A and Mechanic B?

A That is right, Mechanic A and B, that is right.

Q Mechanic A is higher than a B mechanic?

A That is right.

Q And in the contractors' shops --

A They have mechanics, mechanic and helper I believe, two classifications.

Q Handyman there or --

A We used to have them, no more. Done away with.

Q Handymen, what did they do, sweep up?

A Some of them were parts clerks and some were sweeping floors.

Q Do you know what the pay of those various men is today, roughly?

A I don't know.

Q A Helper B is about $7 an hour?

A Around that.

Q And a Mechanic A about $8.25, something like that?

A Whatever it is. I haven't got the rates with me.

Q When a mechanic works overtime they get time and a half?

A Up until five o'clock on Saturday and then

double time after for Sunday.

Q When outside people work overtime do they get double time?

A That is right.

Q The mechanic on the inside makes about $3 less an hour than the mechanic on the outside, right, roughly speaking?

A I would say $2.50, $3.

Q How does a person begin to do 15C work?

A That is up to the contractor. We don't get into that at all. The contractor is at liberty to hire who he wants. He only might call us, might call the business agent if a shop lays off like now, the work is so slow that they are laying off mechanics. Heretofore they never laid off a mechanic.

Q Never laid off a mechanic before today?

A Not in the shops, no.

Q Before we figure out how the man gets the job he begins as a helper if he doesn't have any experience?

A In most cases and the contractor hires the helper.

Q What do the helpers do?

A Helps the mechanic.

Q And carries the parts and carries tools?

A Whatever he does. The mechanic shows him just what to do.

Q And he becomes after awhile the mechanic B?

A It takes him a long time because the machinery today is not like it was years ago, because as I explained to you before, this machine really is all run on -- computerized.

Q Which machinery is computerized?

A Talking about the big loaders, the dozers, the graders.

Q The computer runs it?

A No, but it is run, the computer is in the shop and these machines are all hydraulic run, run on hydraulics.

Q Uses a cable?

A No more.

Q Now it is all hydraulic?

A That is right.

Q How does the computer come into it?

A They got computers that tells them just the way gears are set and it is more intricate than it was years ago. It takes a longer time for a man to become a full fledged mechanic.

4.5

Q After a man is mechanic B, then he moves up to A, right ?

A Then he is sent to school out to the manufacturer if the employer sends him to go to school.

Q And then the mechanic can handle anything?

A Is supposed to.

Q He supervises Mechanic B and B's have to have supervision?

A That is right.

THE COURT: When does he go to school?

THE WITNESS: Whenever you have a new innovation, Judge.

THE COURT: Before he becomes a mechanic?

THE WITNESS: No, after he is a full fledged mechanic.

Q This computer is used to test the equipment I take it, is that right?

A In most cases, yes.

Q Do your men run the computers?

A No, absolutely.

Q When an employer needs somebody new in the shop he calls up the union, doesn't he?

A He does not.

Q What does he do?

A He goes and hires who he wants. If he is satisfied within thirty days' time, sometimes sixty days,

we put him in the union.

Q He never calls the hall for --

A Very seldom.

Q The contractor?

A Either the contractor or the dealer will never call us for a helper.

Q Doesn't the union know who is qualified to be a mechanic, don't they?

MR. BRADY: Objection, your Honor. The original question was they called for a helper. Now he is saying a mechanic. I think if you will make the distinction clear, Mr. Devorkin, you will get the answer.

T5

Q Well, does the contractor or the dealer call for mechanics from the union?

A Well, if he does -- if he does call for oneand we have one.

Q They do that, don't they?

A Not very often, no.

Q It doesn't happen very often?

A No, not very often. This is a lull -- within the last six months, the dealer shops and the mechanic shops are down to a lull due to this -- to this lull in the building line that we have in the City.

Q If there is a lull then they don't need to call for a mechanic?

A No, they don't call.

Q If there was a lull --

A If they did call before and we had one, they would get one.

Q How often do they call -- once a year?

A No, they wouldn't call once a year -- in good times.

Q You would get a call once a year?

A Not for mechanics, no -- they wouldn't let a mechanic go.

THE COURT: This is work where?

MR. DEVORKIN: In the shop.

THE WITNESS: Both the contractors and the dealer shops.

THE COURT: In the shops?

THE WITNESS: Yes.

THE COURT: This is not --

THE WITNESS: Not construction -- not on the job site.

Q The shops do the real serious overhauls of machinery. They don't do that on the outside; they do that in the shop?

A Yes.

Q They break an engine down -- they do that in the shop?

A Yes.

Q So these mechanics have to be very, very good, don't they?

A That is right. That is why they are not laid off.

Q And very rarely do they call the shop?

A Yes.

Q Are they supposed to call the shop?

A No, not that we ever told them to do it.

Q Never told them?

A No.

Q Do you make them call the shop?

A No.

Q You don't care?

A No, because after 30 days or 60 days if they are satisfactory we ask them to join the union, and we don't have any problem.

Q You sometimes have mechanics in the union out of work, don't you --

A I just said it is only lately we have had them out of work.

Q Let me finish my question, then give your answer; okay?

A The questions are too fast.

Q All right, I will try to slow down.

The union has some 15-C men all the time looking for you to help them in the work?

A Try to help them in the work, yes.

Q But there are such men, aren't there?

A At the present time there are. There were times when we didn't have any.

Q Well, say two or three years ago you never had --

A No.

Q -- any 15-C men looking for work?

A No. Not a man that could do something -- no.

Q If a man can do something and he doesn't have a job, he has to get a job somewhere?

A That is right. It is pretty hard to get a helper on a job.

Q I am talking about a mechanic.

A No, no trouble with a mechanic getting a job, if we have good times on the outside, and that fellow was a mechanic we would use him on the outside.

Q What do you mean, you would use him?

A Well --

Q What do you do -- you get him a job?

A Right.

Q And you might get him a job inside if there was a job?

A If there was a job inside, but I don't get a call for an inside job. That is where they hire their own men. They know mechanics.

Q Did you ever get mad at a contractor?

A Never got mad at one in my life.

Q Did you ever get mad at an employer or a contractor because he did not call you to get a mechanic but instead hired one on his own?

A No, not to my knowledge.

Q The union wouldn't do that?

A What are you asking me -- would the union do it or would I do it?

Q It is not union policy to do it?

A No, it isn't the policy to do it.

Q Do you prefer them to call you?

A No, I would rather they go ahead and get their own men.

Q And if a man is hired by the shop and he is around the shop for 30 days he automatically gets into the union?

A That is right, no problem.

Q The contract requires it?

A Pardon?

Q The contract requires it, doesn't it?

A The contract, yes. If the employer is satisfied with him, that is right. I certainly don't want to take him into the union if the contractor is going to let him off.

Q If the contractor would say he is a good man --

A If he says he is a good man, he comes in.

Q No committees or anything?

A No, he is the one that is putting him on.

Q No committee to go in front of?

A No, he goes in before the executive board --of

course he does.

Q What happens?

A If he is passed by the executive board he is taken into the union.

Q Do they ask him any questions?

A Oh, sure they do.

Q What do they ask?

A Ask him where he comes from, where he was working prior to that, is he a citizen.

Q Does it make any difference?

A You don't have to be a citizen any more.

Q Does it matter where he comes from?

A No.

Q Does it matter who he worked for before?

A No, only for the record, that is all.

Q This is just for information?

A That is right.

Q Now, have you ever had an apprentice program for mechanics?

A Well, the shops run their own program.

Q Has there ever been a union program for mechanics?

A No.

Q Has there ever been a joint program between the unions and the shops?

A No, but there is one under way.

Q There is one under way?

A There is one under way from the -- not from the union -- from the shops -- the shops, the dealers -- they are after the dealers, I believe.

Q There is a clause in your 15-C contract, isn't there, that requires the union and the employer to set up a joint apprentice program?

A That is right, that is right.

Q How long has that clause been in the contract?

A Only the last three years, I believe.

Q Only in the last three years?

A I believe so.

Q Are you sure it is not longer?

A I don't think so. I could be wrong.

Q The last 10 or 15 years?

A It could be. I don't take care of that. I don't believe so, I wouldn't know.

Q But you have never set up a joint program?

A No, I haven't.

Q So that do the employers run such a program, do you know?

A Oh, no. What they want is being forced on them now, is to put more minorities into the shop.

Q What do you mean,"being forced on them"?

A By the authorities, the City and State.

Q How do they force them?

A I don't know. That is what I have been told by them.

Q What did they tell you?

A They just told me that they will have to get some more minorities. When they hire the minorities they quit on them.

Q The minorities all quit?

A Yes.

Q Now is there a shortage of qualified mechanics in the City?

A No, not now.

Q Not now. Usually there has been, hasn't there?

A In good times there is a shortage all around.

Q Everybody always needs a good mechanic?

A Yes.

Q Pretty rare, aren't they, good mechanics?

A Not now they are not.

Q But before the last six months they were?

A No, the last -- prior to that they were.

Q Part of the union's job is to supply contractors with help, isn't it? You make that commitment with a

contractor when you sign up with him?

A No.

Q Would you tell an employer that you were going to try to find him qualified people?

A He has never asked me to find him qualified people.

Q Do mechanics ever learn to operate machines?

A Oh, sure they do.

Q How do they do that?

A They do that when they are testing the machines in the shops, and after they fix them they get them on the job under warranty -- they go out and run them.

Q What do they do -- they run the machine?

A Sure they do.

Q They work the levers?

A Sure they do.

Q Make sure the pieces work right?

A Right.

Q They actually go out and dig with it?

A Absolutely. They have to go out on the job after it is fixed. They have to take the machine to the job.

Q Take it to the job?

A Yes.

Q When he gets to the job what does he do?

A Delivers the machine to the contractor and gets up on it and demonstrates it and shows him that the machine is in good shape and stays with it.

Q He doesn't sit there and dig a trench with a backhoe?

A Sure, he might. Why not? How the devil is he --

Q I am just asking you.

A Sure he does. That is where all the good men come from is the shop.

Q The shops. You have a lot of transfers from 15-C to 15?

A Yes, plenty of them.

Q And a lot of your best operators come from the shops?

A Yes.

Q Now the 15-C men don't get referred out by the union to outside work, do they?

A In some cases they might. If a call comes in and we need men, and if there is nobody around they will go out on the machine.

Q Do some of the contractors use 15-C men as operators in the summertime and mechanics in the winter-

time?

A No, just the opposite. They might use 15 men working on the machines doing the actual work in the summer months, and in the winter months bring them into the shop -- the employer, that is, the contractor might bring the mechanic in -- the operator in and work in the shop and work on his machines, if he is able to do it.

Q When he is in the shop does he get the shop pay rate or outside rate?

A No, that is up to him -- in most cases, in 50 per cent of the cases they pay them the outside rate. The other 50 per cent they ask them do they want to stay on, they will keep them on and pay them the shop rate. It is up to the man.

Q The man has his choice to take a high rate of pay or low rate of pay?

A If he wants to be in the shop.

Q Do you remember the period after World War II in terms of this trade whether --

A Do I remember what?

Q Do you remember the period after World War II, were there a lot of mechanics coming out of the Service looking for work?

A No. I will tell you, after World War II, we

got a lot -- of course we sent most of the mechanics to World War II, and most of the operators to the Seabees -- that is where they got all the men from, from the Operating Engineers, and any of them that were qualified after World War II were either operators or mechanics -- they were given preference.

Q And the veterans got preference?

A Oh, yes, very much so.

Q And they all got into the union?

A They still get preference today.

Q Veterans get preference today?

A Yes, sir.

Q 15-D, those are the surveyors; is that right?

A Yes.

Q Who is the current business representative for the surveyors?

A You have two of them -- a fellow named Anthony LaBata, and the other fellow is Charles Gambino.

Q When did 15-D first come into existence?

A Well, the contractors --both the BTE -- the Building Trade Employers and the general contractors called me to a meeting back in the 60's and told me that the office workers were going to organize the field engineers, and we were doing then, in the 60's, quite a few of these

concrete buildings. They were doing away with the structural steel, and most of it was concrete, and the field engineers, of course, are a greater part of the -- there is more work on the concrete structure than there is on a structural steelstructure for a crew of field engineers, and I got into it, and I was successful in organizing them. We had about 200 to start with, and that is the way it is. Today I guess I have about 1500 or 1600 or 1700 or 1800, something like that.

Q Did the contractors tell you why they wanted your union as opposed to their union?

A No, they didn't seem to think -- these fellows were looking for a home and they didn't feel these fellows came to them -- they didn't feel they would like to go into office workers and they asked the contractors if there was any union, and so they called me and asked me if I would be interested.

Q You mean the contractors wanted them to join the union?

A They didn't want them to join the union. They didn't wish them to be an office workers union working on construction work.

Q They did not say why?

A They did not tell me why. They did not have to

tell me why.

Q Why?

A You asked me why. I don't know why.

Q Do you know why?

A No. I am asking you why.

Q What other job categories are there in 15-D, Mr. Maguire?

A Chief of party, instrument man and rod man.

Q What does the rod man do?

A The rod man is a fellow that helps the instrument man, and the chief of party man, he holds the rod and in cases must be able to take readings, in some cases.

We run a school for them. My friend, Mr. Batiste,is the school man. We have a school in Brooklyn that runs five days a week.

Q Do you run that school or is that somebody else who does that?

A That is run by the union.

Q It is not run by the Brooklyn Technical Institute?

A I don't know what the name of it is, but that is a school.

He is doing a very good job from that angle.

Q You mean these unions runs it?

A The union is paying for it. The men pay for it,

sure, there five cents an hour that is given in for the apprenticeship training.

Q Now, what does the instrument man do?

A The instrument man is the man on the instrument.

Q And the chief of party?

A The chief of party, he is the boss -- he is the one that makes the decisions.

Q And a rod man after a while learnsthe instrument man's job?

A Yes. He gets to be an instrument man and after so many years, or how long it takes, he becomes chief of party.

THE COURT: This is surveying?

THE WITNESS: This is all surveying, yes, Judge.

Q Does the union handle job referrals for 15-D men?

A No. In most cases they hire their own men.

Q They hire their own?

A Yes. They know the men pretty well.

Q How do they know?

A Well, they worked with them before and they will call up and say, "Is So-and-So available?"

Q The employers don't call the union office?

A They will call up and say, "Is So-and-So out of

work? Did he say he was out of work?"

Q And what do you do?

A If he is out of work we will give him his telephone number and let him call up.

Q You don't keep an out-of-work list?

A Oh, yes, we keep an out-of-work list. Men call up when they are out of work.

Q 15-D men?

A Pardon me?

Q 15-D men call up and put their name on an out-of-work list?

A That is right.

Q What does the union do with that list?

A They hold it there until somebody calls up, and he wants to know if they want them or there is a job for them.

Q So the union men think the union is going to help them get work through the out-of-work list?

A Well, sometimes they do, that is right.

Q And the contractors are not supposed to call up the hall first?

A He is not compelled to. He can hire his own men.

Q But he usually calls the hall first, doesn't he?

A No, he will usually go to look for his own men.

Q The union doesn't care if he calls the hall first?

A No.

Q Wouldn't it be easier for you to get your men work if he calls the hall first?

A No. It would be easier for the contractor to do it the right way -- go and get his own men.

Q If he does that and he is hiring non-union men?

A If he does then we will put them in the union.

Q You don't want to give jobs to the men who are in the union?

A Yes, we want to give jobs to the men who are in the union, that is right.

Q So it is better if the union gets a call from the employer first?

A We don't have a referral system.

Q But the union can help its men better --

A We help them, as far as we can we do.

Q And help the men better if the contractor calls the hall first; right?

A No, I wouldn't say that, no.

Q If a contractor finds a man and he is not union, does he notify the union?

A In some cases he does. In some cases the busi-

ness agent would find him on the job.

Q And then the man has to join the union?

A He asks him, "Are you in the union?"

"No."

He says to the contractor, "Are you going to keep this man?"

If it is a day or two he doesn't bother, a week, but if it is any length of time he will ask the man to joi the union.

Q What is "any length of time"?

A Well, anything over a month.

Q Have you ever told your men to check with the business agents before changing jobs?

A Have I ever told my men to -- what?

Q To check with the business agents before changing 15-D jobs?

A Did I ever tell my men to check with the business agents in seeking a job?

Q Before they change their jobs.

A Oh, yes, oh, yes. Yes, I did -- oh, yes -- you mean going to another one?

Q Yes.

A Oh, sure, sure.

Q You have told them. Why?

A For the reason that I would have a job going without a man on it. I wouldn't let them go from one job to another without notifying them. It isn't that we won't let them go to the other job, but we want to know what job they are leaving so that we can fill their job and see that the job is filled.

Q How would you see it is filled?

A By them calling us.

Q Then what would you do?

A Well, we would ask him, "Do you mind if we have a man off the list to send you? This is the out-of-work list."

Q Does the union run a hiring hall or a referral service for its men?

A No, we don't run a hiring hall, no.

Q Do you have a day room?

A There is a day room, yes.

Q What is the day room?

A It is a place where the men come and report.

Q Where is that day room --

A Get their names on the list.

Q Where is the day room at?

A The day room for what?

Q For Local 15.

A For business?

Q Yes.

A Northern Boulevard and Parsons.

Q What percentage of the members of Local 15 use the day room, would you say?

A What percentage of the men out of work?

Q What percentage of men working in the industry in Local 15 wind up using the day room?

THE COURT: When? Do you mean now?

MR. DEVORKIN: At any given time.

Q Over a year's period of time, what percentage of the men are employed regularly, would you say?

A Oh, good God! I would say --

Q About 70 per cent?

A Yes, about 70.

Q And the other 30 per cent go from job to job?

A That is right.

Q And use the day room?

A Yes.

Q Is this day room run jointly with Local 14?

A It is their building. We pay rent there.

Q And you are both in the same room physically?

A Yes, that is right.

Q This day room, it is somewhat like the court-

room?

A About the size of it.

Q And as you understand it, how does the day room actually operate? What happens?

A Well, if a call comes in for a certain man and he is in the hall they call his name out and say, "So-and So wants you," or if you get a call you call on the list and look down the list where a man is qualified to do the job.

Q If man is outof work and he wants to use the day room what is he supposed to do?

A Sign up and say he is out of work, and how long he is out of work.

Q When does he sign up?

A As soon as he comes into the day room.

Q When is the list first put out?

A Monday morning -- every Monday morning.

Q And people come in the hall on Monday morning to sign it?

A They come in every day of the week, but it starts off on a Monday morning.

Q And they all stand around waiting for the list to be put out?

A They have a seat.

Q And then the business rep comes out with the list to sign it?

A Yes. He tells them to sign their name, and if it is a period of time, how long they have been out of work, for the length of time or where they have a long period -- a lot of unemployment they will put down the length of time they are out of work.

Q When does that happen? Does it happen all the time or when there is a lot of unemployment?

A Only when there is a real unemployment situation, as is now.

Q If a particular man is out of work for six weeks, he doesn't put down that he is out of work?

A Not if there is a few men around -- he wouldn't put down six weeks.

Q He then puts down his name?

A That is right.

Q Does he put down the union?

A Yes, he puts down what he does.

Q Does he put down if he is in the union?

A That is right -- puts down the local, and the other fellow puts down a permit -- he puts down a "P." That means he is not in the union yet. He is waiting to get in the union.

Q Does he put down the equipment that he operates?

A That is right.

Q But he doesn't put down how long he has been out of work?

A Onlywhen there is a severe unemployment.

Q How does the man know what to put down when he is out of work?

A They can tell by the amount of men in the hall.

Q Sometimes the business rep says, "Put down how long you have been out of work"?

A He does -- in most cases they do.

Q And the business rep comes out of the office and puts the list downand everybody signs it?

A No, he takes the list and writes it himself.

Q Everybody gets up in line to sign it?

A They get up, but he goes around to them.

Q He goes around to them?

A Either way.

Q Does he put them down in any order?

A Well, whether they are sitting or standing, yes.

Q Do men call into the union to put on the list?

A No, we don't go by that too much. We tell them to come over to the hall and sign up.

Q Sometimes they call in?

A Sometimes they call, but they won't geton the list.

Q They don't get on the list?

A Not very much, not to my knowledge.

Q After the list is made up and the man has his name taken, how does the business rep use the list to find men work?

A By those that might be available, where the contractor has got nobody of his own, he has a particular job, and there are men available to do that job, then he would go down and look at the list and find out how long a man has been out that is capable of doing that job, and he will give him the job.

Q So an employer calls in and says, "I need a dozer operator" --

A Yes.

Q He tells the business representative that, is that right?

A Uh-huh.

Q What does the business representative do -- go down the list?

A Yes, find out -- try to figure out who is the longest out that is capable of running this particular dozer.

Q But he wouldn't know that because they don't always sign in how long they have been out of work?

A Well, in this particular case he is going to ask him.

Q Why in that particular case?

A Because it is a case of where there are only probably 30 men sitting in the hall, but if there is 100 men sitting in the hall he is certainly going to ask them, "How long have you been out of work," and put it on the sheet.

Q If there are 30 men in the hall what does he do?

A He will take care of their names.

Q Is it the first man on the list that he gives the job to?

A No, he does not. He goes down the list. He talks to the man and finds out how long he has been out of work; if he is capable of doing the job he will give him the job. He tries to give it to the man out the longest, whether there are 30 or less men, out of work.

Q Mr. Maguire, if there are 30 men or less in the hall and a call comes in for a dozer operator, the business representative asks each of the 30 men how long they have been out of work?

A No, he does not. He can generally tell who the

longest is out, generally tell --

Q By just looking at them?

A Just a minute. You asked me for the answer. And if you will let me answer it, I will answer it for you. Don't put words in my mouth.

He will go down the list and find out and say, "Well, you have been out," to a fellow that he feels can run this particular machine, and he will go down further and the fellow who is longest out of work and can handle the machine he will give it to that man.

Q How does he know whether a man can handle the machine?

A Because he is pretty well familiar with the men, whether they are in the union or out of the union.

Q He relies on his own knowledge?

A No -- on his own knowledge because some fellow that is in there, the business agent that is taking the list is also out at the school, and we have men from the school that are on that waiting to go out on some work during the week -- while they are going to the school they work while they are going to school, and he finds jobs that fit in their category. They are not full-fledged operators, but he can find jobs for them in some category where they will be able to take home some money during the week

while they are going to school.

Q Now if Judge Tenney went down to the hall on Monday morning and put his name on the list, and a call came up for a dozer operator, and the agent asked him whether he was qualified, and Judge Tenney said, "Well, I can operate it," would the man send him out to work?

A I don't know if he knows Judge Tenney.

Q So if he doesn't know the man --

A If he didn't know the man the man wouldn't be in the hall.

Q You mean only men that the agent knows are in the hall?

A I would say, sure, absolutely.

Q And what happens when a new man comes into the hall?

A A new man will go up to the agent and get himself known, wouldn't he?

Q Would he?

A Sure, he would, absolutely. He justwouldn't sit sit there.

Q How does he get himself known?

A He would go up to the agent or up to one of the agents and say, "I am So-and-So."

Q Anything else?

A "I am looking for work."

"What do you do?"

"Well," he says, "I run such-and-such."

"Oh, you do? Where did you learn to run it?"

He says, "I went to such-and-such a school."

"Oh, yes. Well, you come out Saturday morning and we will try you out and see how much you can run."

I never got one yet that could run.

THE COURT: We will take a short recess at this point.

(Recess.)

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

MR. DEVORKIN: Mr. Reporter, will you read back the last question and answer?

(Record read.)

BY MR. DEVORKIN:

Q What did you mean by that last answer, Mr. Maguire?

A Well, by that last statement I meant you have these schools running around the country, and on television where they are charging these fellows anywhere from 1500 to 2000 dollars for a course in running heavy equipment. They give them a diploma after a couple of weeks, three

weeks, bring them into a classroom, show them some slides, and probably have some broken-down equipment which they never got on.

The fellows come up and say they have down to such-and-such a school, they have a diploma.

You put them on the machines and they can't do anything.

I made this complaint when I was testifying down here before the U.S. Attorney back in '73, I believe. I don't think there was anything ever done about it. I made it in writing.

I don't know why something isn't done. The government is paying for some of these poor veterans. They put them through these courses. It doesn't do any good.

Q Is that true of whites and blacks, too?

A It's mostly minorities that they are taking, but there is some whites. The majority are blacks.

THE COURT: Is there a list of these so-called schools?

THE WITNESS: Yes, they are around. They are in New Jersey; they are out in the Middle West. They are down South. They buy their surplus equipment from the government. I guess they got licensed -- most of the work is

classroom. It is money that these fellows get, and the fees are up to 2000 or 3000. What the government has been doing for the veteran is picking up half of the tab. Of course the poor fellow, when he comes out knows nothing. This is just money down the drain.

Q Do all of the minorities that come into the hall come from these schools?

A Quite a few. We have a list of quite a few of them.

Q Most of the minorities come from these schools you think?

Q Most -- not the minorities we have. I say most of the fellows that go to the schools or come from the schools, from these schools are minority.

Q Are most of the minorities that come into the hall that look for work, do they come from schools?

A I would say yes, yes, yes -- right now, yes.

Q Have you ever been --

THE COURT: Is that how it came to your attention?

THE WITNESS: Yes. Then we test them out and these poor fellows can't do anything.

Q Have you ever gone to any of these schools?

A Pardon?

Q Have you ever gone to any of these schools?

A Oh, sure. Did I!

Q Which one?

A The one in New Jersey, down in South Jersey -- Bordentown or something.

Q Are you aware of any other training programs or methods besides these schools?

A Well, we have one going ourselves.

Q Besides yours?

A No, I don't know any others outside of these schools that I know of. Some of our locals are running their own schools like we are.

Q Does the International have a training program?

A Yes, they do.

Q It is not very good, though, is it?

A Well, I didn't have very good luck with it -- with some of the ones that came up.

Q Where is that program?

A Down in Jacobs Creek.

Q Is that a classroom program, too?

A A lot of it.

Q Do you know anything about the Army program?

A No, not too much.

Q You get a lot of guys that come in and say that they worked in the Army?

A Yes, I get plenty of them. When they say they worked in the Army I say, "What did you work on?"

He says, "A tractor."

I said, "What do you mean?"

And he shows me a bulldozer.

And he says, "No, I don't mean with a blade on it -- just four wheels -- a tractor."

Q They say they did work on bulldozers?

A Without a blade it is a tractor, and with a blade it is a bulldozer.

Q What about cranes?

A Well, the crane wouldn't come to me because I wouldn't have anything to do with the crane.

Q Do you know anything about how good the Army's training program is?

A No, I don't know how good it is.

What are you talking about, the Army Engineers?

Q Yes.

A I don't know anything about it, no.

Q Have you ever received any materials from the International asking you to comment on the Army's training program?

A Well, if it did it probably skipped my mind -- I probably did.

Q The last eight months?

A Not to my recollection.

Q Does every man who is new and comes into the hall and makes himself known to the business agent, have to go out to the school to take a test?

A No. I will say this to you, every man that we don't know that says he is an operator, and says that he could go to work with such-and-such an employer, I say "Fine, we would like to test you first," and they come out there. If they are capable they have no problem whatsoever. If they are not, then we call the employer and say, "This fellow, we will send him to you but it is up to you if you think he can operate. We tried him and he can't operate."

What kind of a test do you give?

A Most things, that is, you see, there are two things that we really look into before they do anything else. There is a very important factor, both from our International point of view and our local union point of view, and that is, No. 1, the kill, and, No. 2, the safety. The safety factor is built into the International because so many things can happen with the equipment -- accidents -- and that is one thing that we get over first, is the safety factor in the school, and then the skill.

Q Putting the skill aside, when a man comes in and you have to test him in the school, what kind of a test do you give him?

A Put him on the machine that he says he can run.

Q How many machines?

A We have 18 or 20 machines out there, of various types.

Q To pass your test does he have to pass a test on each machine?

A No, not necessarily.

Q Well, what does he have to pass a test on?

A I would say to you if he told us he can run such-and-such a thing, or two or three, or he can run two, that is qualified enough for me.

Q If he can run two?

A Yes.

Q What if he can only run one?

A We do not graduate them until they could run three. But now they got to a point where we graduate them now even though they become experts on one or two machines.

Q One or two now?

A Yes -- on the machines that we need the most men.

Q What is that?

A That is the backhoes, the hydraulic backhoes and

the loaders.

Q Do the procedures at the day room apply equally to union and non-union men?

A Oh, yes, yes.

Q How about out-of-town union men, another local?

A Well, the only time an out-of-town local -- the only time that we take care of a fellow from an out-of-town local is where we needed men and we put his name on the list, but he wouldn't be given any preference over the union member, for the union member of ours.

Q Which comes first, the union man or the non-union man?

A No, with us it is the same thing.

Q Before you had this school how did you test new men?

A Well, we had another school before this one. We had to give it up because they took the property and took it away from us.

Then we tried another piece of property, and that was taken away. They wouldn't let us have it. And finally we wound up with this property up in Kennedy Airport through the Port Authority.

Q When you did not have a school, Mr. Maguire, how did you test men?

A On the equipment -- no classroom, just equipment.

Q Would you send them out to an employer to test them?

A No -- you mean before we had the school?

Q The school began in 1971.

A That is right.

Q Before that.

A That is this school here?

Q Where are your other schools?

A We had another school. It didn't fare out because they took the property away from us.

Q How long did that last?

A Oh, about six months.

Q Besides those six months and besides 1971 to date how did you test a new man?

A We had no way of testing him whatsoever unless we went out to a contractor's job and tested the man there. That was the only way we coulddo that -- going out on a Saturday and testing him on a contractor's piece of equipment.

Q So if a fellow came in and he was a new man and he said, "I worked dozers in Chicago" --

A That is right.

Q -- he was sent out to a job, if there was a job

available?

A What?

Q If there wa a job for a dozer man, and a new man came in your hall and said, "I can run dozers," and you had no way of testing him, you sent him out to try him out?

A We asked the contractor could we test this fellow out, that is right.

Q On Saturday or on the job?

A It could be during the week, any day.

Q You would let him try to take the job?

A If he was capable -- if he could run the machines we would let him get the job -- if he had a job to go to he would get it.

Q When you send a man out to a job after an employer has called in for a man, do you give the man anything -- a piece of paper of any kind?

A You give him an address where to go to.

Q And he reports to the foreman on the job?

A He reports to either the master mechanic, if there was one on the job, or the foreman.

Q How does the foreman know he is coming from the union?

A That is, if he is coming from the union?

Q If he is, how does he know that?

A Well, if the foreman called up for the man, he would know.

Q Do you ever sign up men for work at union meetings?

A No.

Q Are there any jobs that men don't like to take?

A Oh, gee, I would say there are.

Q Which jobs?

A Them backhoes. They don't like to run them.

Q Why is that?

A Oh, they are tedious jobs, and that is where you need the most men is on the hydraulic backhoes.

Q Is that hard work?

A It's tedious work. It's work that you have to be carefulwith. There is a skill in it, and there is a safety factor in it.

Q The backhoe digs a trench?

A That is right. You have seen them running around the street.

Q Local 14 has backhoe men, doesn't it?

A They have the big machines -- the big two-man machines.

Q And you have road rollers?

A Rollers?

Q Yes.

A We have rollers under 5 ton -- 5 ton and over.

Q Local 14 has them over 5 ton?

A 5 tons -- over 5 tons.

Q And how about cherrypickers?

A Yes, cherrypickers -- they have cherrypickers on building work.

Q There are cherrypickers working above the ground?

A That is right, on buildings above the curb.

Q And yours are on the ground?

A Anything from the ground -- heavy construction or building construction -- they have building construction with the cherrypickers -- even though it is written in our charter for cherrypickers.

Q What about the well point job? Do the men like that?

A Oh, no.

Q Why is that?

A That's hard work.

Q Why is it so hard?

A Well, you know, these well points are about 20 feet long. Sometimes you have to jet them down with water, and there is a gang of four men and a foreman -- the foreman works just the same as the men, and it is for drying up

an area. You put the points -- throw a point on the end of it. There is just nothing else -- if you dig a well and get water from the well and put that point on it -- it is the same system. And you do that all day long. You are in water, and you have boots on, and you are lugging this pipe around and putting -- you are doing this all day long.

Q It is pretty messy work?

A It is, but it is good pay. It is the high pay. You get the highest rate.

Q The object of that is to keep the water table from interfering with the job?

A That is right.

Q There are four men in the crew and the foreman?

A They do the installing.

Q And a Local 14 man runs the pump?

A He is running it, and a man works for him on day shift only, five days a week.

Q The next man is a fifth man?

A Yes.

Q How about tunnel work? Is that very popular?

A Yes -- that is hard work. It's good work, very, very good work.

Q Messy.

A But, as I say again, there is a lot of safety in it, a lot of skill in it. It is steady work.

Q Does a man ever refuse work?

A Oh, yes, many, many times.

Q They tend to refuse well point jobs?

A Yes, they do.

Q And backhoes?

A Backhoes and tunnel work. A lot of them don't like to go into tunnels. It is a tough thing for a man to say but black people don't like to go into tunnel work. They don't like the well points.

Q How do you know that?

A Well, they tell me -- the business agent -- the business representatives tell me.

Q Do the whites like that work?

A No, they don't like it, but the blacks that like it -- either new fellows coming in -- you are trying to get them some work while they are going to school, if you follow me -- you try to get them some work so that they will take home some money and at the same time put bread on the table, and at the same time go to school and learn to become operators.

Q What happens if a man refuses a job that the agent gives him?

A We don't hold it against him.

Q He can have another job?

A If another job comes in we try to get him another job.

Q And blacks refuse jobs --

A I don't care, pink, yellow, black -- as long as he can do the work.

Q Do blacks refuse many jobs?

A Yes, they refuse.

Q A lot of jobs?

A I don't say a lot, but in the course of time they refuse that type of work that I mentioned to you.

Q They refuse it more than whites?

A Yes.

Q A lot more than whites?

A More than whites.

Q A union also refers out foremen -- a man who is a foreman on a job?

A No, very, very seldom. The boss always hires their own foreman. In 99 per cent of the cases the foreman is always hired by the boss.

Q What about in a well point?

A Well, the well point foreman, mostly he is either a fellow that has been around installing well points because there is a certain bit of knowledge to that that

you must know, and in a good majority of the cases a fellow that uses well points, the contractors that use the systems, and the well point people that either install the systems or sell or rent the systems to the contractors, they will send a foreman with it.

Q The foremen get paid more, don't they?

A $3 a day over -- he is a working foreman -- over the mechanics.

Q Does he also get extra overtime?

A No, no, absolutely not.

T6

Q If an engineer is working he has a foreman there too, doesn't he? If an engineer gets overtime, the foreman gets overtime?

A You are going all over the lot. What are you on now?

Q If an engineer works on a job and he gets overtime, the foreman gets overtime, any job?

A What engineer?

Q Any engineer in your union - -

A Yes.

Q -- if he works overtime, there has to be a foreman on the job?

A One of my foremen?

Q Yes.

A No, of course not. Whatever gave you that idea?

Q I don't know, Mr. Maguire.

A The only time my foreman is on the job is when there is a master mechanic.

Q The union helps choose the master mechanic?

A You better ask 14, that is their business.

Q The master mechanic is a 14 man?

A That is right.

Q Have you ever told anyone at any time that jobs have to go through the union?

A Never.

Q Never told the contractor that?

A Not to my knowledge.

Q Never told anyone else that?

A No, sir, not to my knowledge.

Q Do you prefer that the contractors that want 15 and 15-A men call the hall instead of hiring their own men?

A No, not as long as they are paid-up members of the union, I couldn't care less.

Q As long as they paid-up members?

A That is right, and if they are good men not in the union and they have somebody that is willing to join the union and we are able to do something for them, we will do it.

Q Do you mean a man --

A If they are competent.

Q If a man is willing to join the union he can?

A He can.

Q He can?

A He can if he is capable, either being a mechanic or an operator.

Q Do you have any formal applications for membership?

A Formal?

Q Written applications a man fills out?

A Yes.

Q When does he do that?

A He does this before the executive.

Q If I walked in the hall and said I am an operator and I could operate any piece of equipment in your union and want to join the union, what would happen to me?

A You wouldn't join in the hall.

Q What would I do?

A First-off, if you told the union you could operate a piece of equipment that is under my jurisdiction, you would have to prove it to me first that you could do it.

MR. BRADY: Didn't we go over this a few minutes ago?

THE COURT: I thought this was all right.

MR. DEVOKIN: This testimony I believe was about if you are working and has nothing to do if the man is not in the union.

THE COURT: We are on the subject now, okay.

Q I would prove it to you that I could be qualified, is that correct?

A Yes.

Q What would I do, go out to school and take a test?

A I would like to have you take the test before I bring you before the board to join the union. If you want to join the union you say?

Q Yes.

A And you are qualified. I test you first. If you are qualified, you would have no problem.

Q I am in?

A That is right.

Q How many pieces of equipment do I have to be qualified on?

A I just told you before --

Q To join the union?

A One, at least two, at least two, to have two pieces of equipment most highly needed at the present time.

Q If a man gets referred out to a job and works for an employer how long does he have to work for the employer to be able to join the union? He doesn't take your test, he goes to the employer.

A Yes.

Q How long does he have to work before he joins the union?

A He is working for an employer?

Q Yes.

A 30 days. And if the employer is satisfied

with him, I would say 30 days, that is the law -- 7 to 30 days.

Q When is it 7 and when is it 30?

A I told you before. Why do you keep this up. 7 days on the short-term job. You must know the law better than I do.

Q I don't want to knowwhat the law is but what the union does.

A Lives to the law.

Q If a man works for an employer for 7 days he is in the union?

A On a short-term job.

Q What is a short-term job?

A Anything less than 30 days.

Q Do you ever reject a man who is working for an employer on a short-term job for 10 days?

A Not to my knowledge, no.

Q On a long-term job?

A 30, let him work 30 days.

Q Did you ever reject a 30-day man?

A No, never, tried not to.

Q Does the union have any examining committee besides the executive board?

A Yes, they do.

Q That is in the by-laws, isn't it?

A Yes.

Q What does the examining committee do?

A Asks them questions.

Q About what?

A What they do,what they can run.

Q A man doesn't have to have a City license to join, right?

Have you ever limited your membership in size for factors unrelated to a man's qualifications? Did you ever set a limitof the number of men in the union?

A No.

Q It has nothing to do with how many guys are out of work, does it?

A No. The record will speak for that.

Q What record?

A You have it there.

Q What record?

A We furnished you with the records. You got from 1970 on, 1966 on. The number of men in 1966 and what it is now. Nobody has been turned down.

Q So a man can get in no matter what the unemployment situation is, right?

A Well, if he is capable of running the machine

for the contractor, mostly the contractors put them in, we don't.

Q Do you ever require sponsors to get into the union?

A No, we don't have that.

Q It is in the by-laws?

A Yes, but we don't have that.

Q Did you ever have a Local 14 man sponsor a man for admission to your union?

MR. BRADY: Objection, he said he doesn'thave any sponsor.

THE COURT: Overruled.

(Question read.)

A It might be a sun, yes. He might have a son or might askme about his kid going to school. Put him on the list for the school. If he is capable of running a machine we test him out and treat him like anybody else.

MR. KENNEDY: I move to strike out the witness's testimony as not responsive to the question.

THE COURT: Overruled.

Q Do many fathers bring their sons in?

A There is quite a few asked, but in many cases they just got to wait on the list, that is all.

Q The son gets on the list?

A No, they don't get on the list. They stay on the bottom of the list.

Q What list?

A The list to go to school. There is a list going into school.

Q Do you have a copy of that list?

A I haven't got it

Q Did you bring a copy of the list?

A I guess you can get it. See the lawyers.

Q Do you have a large turnover in your membership, would you say, year to year?

A When you say large turnover, what do you mean?

THE COURT: People leaving and people coming in.

THE WITNESS: No, Judge. We got a big death list.

Q How big is the death or retirement turnover a year, about 3 per cent?

A About that.

MR. DEVORKIN: May I have the Court's indulgence one moment?

(Pause.)

Q Do you remember testifying in November of 1966 before the City Human Rights Commission?

A I remember testifying but I don't remember just

what I said. Maybe you can enlighten me.

Q Do you remember testifying with Mr. Rogers?

A Yes, I remember.

Q Who is Mr. Rogers?

A He used to be a fellow with me, business representative.

Q For Local 15?

A Yes.

Q Reading from Government's Exhibit 13-B for identification, page 795.

THE COURT: What is this for?

MR. DEVORKIN: I just want to clarify.

THE COURT: You can ask him if he was asked this question and gave the answer.

Q Mr. Maguire, do you remember being asked by Mr. Vallon how many men were transferred from your union, into 14?

"Mr. Maguire: When?

"Mr. Vallon: In 1963.

"Mr. Maguire: Good God, I don't know.

"Mr. Vallon: Can you give the figures?

"Mr. Maguire: I don't know if I have them. I will see if I can get them.

"Mr. Rogers:" --

MR. KENNEDY: This is Mr. Rogers' testimony.

THE COURT: That is a different thing, unless he was there.

Q You were present then, weren't you?

A If the testimony is there. I don't recall.

THE COURT: There is no objection to his reading the testimony and asking if he recalls it and whether it is true and so on but somebody else's testimony, that is a different thing.

MR. DEVROKIN: That is all I am going to do at this time, your Honor.

Q You were present with Mr. Rogers before the Commission, weren't you, sitting side by side, weren't you?

A I just don't recall what day it was or -- I remember being down there. Go ahead, anyway.

Q "Mr. Rogers: Excuse me" --

MR. BRADY: Objection, your Honor.

THE COURT: If I don't find it is admissible I can strike it out, but I can't tell. I haven't read this thing. Go ahead.

Q He was an agent of the union at that time, wasn't he?

A Yes.

MR. KENNEDY: There is no proper foundation laid.

The witness has testified he does not recall whether or not Mr. Rogers was there. The purpose of his question right now is to ask him questions and say, "Do you recall Mr. Rogers saying some of these things," and he has not laid a proper foundation for it.

THE COURT: Go ahead. I don't know what he is going to say. If it is not correct, it will be stricken, but let us try and move this thing along.

Q "Mr. Rogers: Excuse me. Understand, our local differs quite a bit from 14 in its size alone, in the diversification of the work. We have a rather fantastic turnover compared to that local or any other smaller local. From these branches we have so many transfers a month going out, people will be transferred from California and we issue a clearance card for a transferring worker. Heis paid up to date, we issue the card, he takes that and leaves. Whether he deposits it in California, Detroit or Florida, we know pretty much who goes into 14 because they are still working with us. These other people take their card and go. They number hundreds."

Do you recall him saying that?

A No, I don't recall that at all.

Q Is that a true statement?

A Not to my recollection.

MR. KENNEDY: Objection, and we move to strike that particular testimony also on the ground that the witness said that he does not recall Mr. Rogers saying that, those particular words.

THE COURT: He was present and says as far as he is concerned it is not true. I am not taking Mr. Rogers' testimony as true, and he is not subject to cross-examination. But I am taking this gentleman's statement that it is not true.

MR. BRADY: Thank you, your Honor.

MR. DEVORKIN: Your Honor, as to Government's Exhibits 13-A and B, the parties have all stipulated they are authentic. I would offer the following pages.

THE COURT: Of what?

MR. DEVORKIN: As to 13-A, the 1963 hearing of the Civil Rights Commission in New York City where the officers of Local 15 testified in their official capacity, I would offer pages 139, 140, 141, 142, 143, 146, 147, 148, 153,155, 158 through 159.

As to 13-B, which are the hearings in 1966 of the City Commission and Human Rights at which officers of Local 15 testified, I would offer the following pages of those transcripts:

771 through 774, 780, 783 through 786, 788,

791, 795, 796, 799 through 801; 805 and 809.

THE COURT: Any of those going to be called as a witness here?

MR. DEVORKIN: Mr. Maguire is testifying and I am introducing these as admissions.

THE COURT: I will permit them to be questioned about it.

MR. DEVORKIN: This is Mr. Maguire. Mr. Rogers' testimony is also contained in there. He was testifying as an officer of the defendant.

THE COURT: He is not going to be testifying here?

MR. DEVORKIN: No.

THE COURT: I may receive it as admissions, but I won't try to rule on it now. Certainly as to testimony by Mr. Maguire, that existed in 1966 and 1973?

MR. DEVORKIN: Yes, sir.

THE COURT: Whatever dates those were.

xx (Plaintiff's Exhibits 13-A and B received as outlined.)

MR. BRADY: Are all these pages received in evidence?

THE COURT: I haven't looked at the pages. I don't know. These were received without a jury here and these matters can be received tentatively and stricken if

there is some objection to them.

We will adjourn now for lunch and come back at 2 o'clock and you gentlemen can look at them.

(Luncheon recess taken until 2.00 p.m.)

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AFTERNOON SESSION

2.00 P.M.

THOMAS A. MAGUIRE, SR., resumed.

DIRECT EXAMINATON CONTINUED

BY MR. DEVORKIN:

Q Mr. Maguire, at the day room are there any signs or notices posted anywhere in the hall telling men how to go about signing on a list for getting work?

A No, we have no notice up there, no.

Q Traditionally what is the best way for men to get training to run Local 15 equipment and then get into your union?

A The best way?

Q Yes.

A Well, the best way, of course, is the school. Next --

MR. KENNEDY: Your Honor, may we have a clarification of what type of equipment the government is now asking about, or is it just a general question?

THE COURT: Maybe you ought to break it down.

MR. KENNEDY: As I understood Mr. Maguire's testimony, there are certain branches, and so I assume that the equipment is different for each one.

THE COURT: I don't know whether it covers all

their equipment or only certain aspects of it.

Q I am talking about the equipment that your men operate.

A 15?

Q 15 men.

A 15-A now.

Q Yes.

A The best way --

Q Traditionally, what if the school was not in existence?

A All right. No. 1 is the school.

No. 2 is for them, while they are on the job, if they can get acquainted with somebody while they are working, is to get acquainted on the job with somebody during their lunch hour,if they can get up on the machine with the operator and get a little experience that way, but normally the best way is through the school.

Q The school just began the end of 1971?

A The end of 1971, that is right.

Q Before that time all of your men learned on the job?

A Most of them learned on the job training, that is right.

Q They might be a maintenance on the job?

A Might have been a junior engineer or might have been a maintenance man or might have been putting in well points; might have been a helper on the job. In that way they get experience, and that way on the lunch hour or after hours or before hours.

Q And the employers allow that.

A Yes, in most cases they did.

Q That is true of even the very expensive equipment isn't it?

A Yes, but that is not true today.

Q That is the way you learned how to operate, is that right?

A That is right -- years ago.

Q And did you learn how to operate a crane that way?

A I never -- I never learned to operate a crane that way. My reason for operating a crane was when, as I told you, I was a junior engineer.

Q You received help from the operator during lunch?

A That is right -- no, I worked at it. I had three cranes to take care of.

Q Would you say that is the best way to learn how to operate, that is, on the job?

A The best training you can get is the school,

and then on-the-job training.

MR. DEVORKIN: May I have the Court's indulgence for a moment?

(Mr. Devorkin examines.)

THE COURT: Now that you have the school, and you have these men, do they work on expensive equipment like on the job?

THE WITNESS: No, we have the equipment in the school.

Q What is the most expensive piece of equipment you have in the school?

A That Local 15 operates?

Q In the school.

A Oh, we have a machine there that is worth a quarter of a million dollars.

Q How many machines are there that are worth that much?

A How many of them that are worth that much?

Q Yes.

A One -- and they go down to 150, 100, 50,000, 75,000.

T2

Q Again, Mr. Maguire, do you remember your deposition on November 20, 1973, at page 74 of Plaintiff's Exhibit 17 for identification being asked the following question:

"Q Have you had any people come in who are graduates of a job corps program of any kind?

"A Oh, let me bring you up to date. We have this school, the International runs, Jacobs. They are all job corps. Another thing, I went after our International man that handles that and we had a pretty bad case with that, too. A few of them were all right but the majority now they were graduating them before the fellows had a chance -- that is another one of them classroom deals. When I hear them classrooms that stops me because I never could see that. I like to get a fellow up on this machine because I can tell him more in five minutes than he can learn there. What is he going to get out of a classroom looking at films?

"Q Generally is your conclusion then that on-the-job training is the only way?

"A On-the-job training is the only training. I would say to that and I have lived with it all my life. I am one that came that way and I have hundreds and hundreds that came that way. Long before this program of minorities got into effect. You know the fellows who learn by getting

up on the machine spends a week, two weeks, three weeks, four weeks on the machine, he is a friend of his, of his father, but I don't know, they learned. I still say that the physical training is best, get up on the machine. We pay big money for this machine."

A I understand that.

Q Was that statement true?

A I remember saying that.

Q Was it true when you said it?

A To the best of my knowledge.

THE COURT: How is that different than what he said now?

MR. DEVORKIN: The position of the union is that is how this school that they have run is the way minorities ought to be trained and --

THE COURT: Working on the machine. You got the machine out there. On the job doesn't mean necessarily on a particular job. You train the particular men on the particular equipment.

MR. DEVORKIN: Your Honor, the government contends it will show as follows: that the man working at the school does not earn money while learning while historically people who have learned, they were paid to learn, and they were paid the union scale. The school

is the way the minorities have been directed to learn in this industry.

THE COURT: Because the man who is working, if he came in early or stayed late or over lunch, they were being paid on the job?

MR. DEVORKIN: Yes.

THE COURT: He wasn't paid for this work.

MR. DEVORKIN: But he had the opportunity to have a full day's work, to get paid, and we will show that generally speaking whites have learned on-the-job and minorities are forced to go through this school. That is what the government intends to show.

THE COURT: All right, go ahead.

Q Now, do members of your union learn how to operate Local 14 equipment on the job?

A Well, the only way that he would learn to operate 14 equipment is go out as a team. In other words, where there is two men on one of the 14 machines and if the operator and the junior engineer that is with him, in most cases they are friends, they are with one another more than with their own wives and, in that way, they get to be friends and they naturally would show the fellow how to operate.

Q What kind of Local 14 equipment, if youknow, has

two men on it?

A How many?

Q What kind of machinery has the two men?

A The tower cranes, long boom cranes, hydraulic, big backhoes, gradealls. Any rig other than a one-man-operated machine.

Q These men who are helping the Local 14 men on this equipment, they are called oilers?

A No, they are not called oilers. They are junior engineers and in most cases are somewhat of a mechanic, help to repair the machine.

Q On the crane, for example, the junior engineer comes in the morning and greases up the machine?

A At the contractor's request. Today they don't have to do that any more because for the simple reason that everything is roller bearings today and there is very little greasing to do outside of the shives.

Q What do those men do all day long?

A He gives signals.

Q On all cranes?

A Mostly, most cranes, yes, other than structural steel.

Q He is working all day long?

A Working pretty near the whole seven hours or

eight hours, whatever the shift might be.

Q Most of the oilers or the junior engineers get to operate this 14 equipment?

A If they see fit they have a good opportunity to do it, yes.

Q They would get up sometimes when the operator didn't want to operate and operate themselves, wouldn't they, under supervision?

A Only under the operators' supervision if he permitted them to do so.

Q Is there any rule of thumb in the industry about how much time a helper is supposed to get on a machine that you know of?

A A helper?

Q An oiler or a junior engineer.

A What? Time for being a what, an operator?

Q To learn under the operator's supervision.

A I don't know. I don't know of no rule. I imagine that if they get their license and appear before their examining committee.

Q I don't think I made my question clear, Mr. Maguire.

When a junior engineer who is a Local 15 man --

A Yes.

Q -- gets help from an operator to learn how to run the 14 equipment --

A Yes.

Q -- is there any rule of thumb in the industry about how much time per day that man should get on the equipment?

A No.

Q It wouldnt be true, would it, that the operator would come in and operate his 14 equipment for an hour or so and let the junior engineer operate it the rest of the day?

A Not to my knowledge. That would be up to the crew themselves. There is no rule pertaining to that, no.

Q When this junior man is learning from the Local 14 operator, he wouldn't have a license for this equipment?

A He is working under that man's license, that is right.

Q But he himself doesn't have the license?

A No -- in some cases they do and in some cases and in some cases they do.

Q It would be pretty rare?

A Very rarely, that is right. They have a Class C license, but that doesn't give him -- that is given out by the State.

Q The cherrypickers?

A No, a State license.

Q Class C?

A You also have another license, crane license given out by the State. 90 per cent of my fellows have that license. But the City license, crane license, overrules this on the 14 cranes.

Q Are there any pieces of equipment where the Local 15 man operates it and the Local 14 man oils it?

A Not to my knowledge.

Q Have you ever heard of a churn drill?

A A churn drill?

Q Yes.

A Sure, I know what it is.

Q Doesn't the Local 15 man operate that?

A I think what you are talking about there is two different things.

A churn drill, my man is the driller, the 14 man is the engineer on that. There is a compressor or another piece of equipment on that drill that the 14 man operates, but my man is the driller.

Q Drilling is a pretty dangerous job?

A The driller -- what is that?

Q It is a pretty dangerous job, isn't it?

A No, they are not dangerous. There are three men on the drills. There is the dock builder, the driller and a 14 engineer.

Q What does the 14 engineer do on the drill? What is his function?

A The three of them work together as a team.

Q What does the 14 man do?

A When they drill a trench, they have to put a bucket in there and bucket out the muck that is in the casing.

Q Who does that?

A The three of them work as a team.

Q Then there is no difference between a 14 and a 15 man on the job?

A No, the three of them get the same rate.

Q Doing the same work?

A Doing the same work. The only thing is that the driller is there all the time around the drill.

Q What is the 14 man doing while the driller is drilling?

A Well, there is work there. He has to be around

there to see that the machine is not moving or is steady, because there is an awful lot of vibration.

Q He has to kind of sit back and wait?

A What does the dock builder do?

Q I don't know. I am asking you.

A I am asking you. You are asking me what the engineer does. He does the same thing as the dock builder. They are around there working as a team.

Q And the 14 man makes sure that the job is being done right?

A The 14 man is there as a team, working with the driller. There is a team of three men.

Q Does it ever happen on a job that a man may be assigned to a dozer and the contractor needs a little backhoe work and he will put the dozer man on the backhoe?

A Sure.

Q Or he may put the dozer man on a different dozer?

A Sure.

Q Isn't it true that sometimes that man will never work that piece of equipment before?

A Never heard of that.

Q You never heard of that?

A No. If he isn't able to get on it -- if he is not able to run it, what is he doing running it?

Q Isn't it true that a man may be working one kind of dozer on the job and be asked to run another kind of dozer on the job which he has never been actually on before but he gets up in the seat --

A No.

Q Let me just finish -- and he figures out how the levers work and he get the feel of the levers and the contractor lets him , and then when he does that he runs off and he has never bee. put on that machine before?

A No.

Q In your forty years in the industry --

A Forty years in the industry, that's right, I never heard of any such thing.

If I may explain something, you don't know what you are talking about, but I will explain it.

Q Go ahead.

A On sewer work there is a crew that runs between the backhoe digging the trench. When the trench is done they go over with the machine filling back into the trench again -- that same crew. Now, the same thing would happen with the one-man machine. He would be on the backhoe in the morning digging the trench. The laborers would go down, put the pipe in. Then some man would move either the dozer or the loader and fill the

trench in, and he wouldn't be playing with the levers. He would know how to run the machine. He would run the two machines in a day, running back and forth. That is what I am talking about.

Q So you are telling me and Judge Tenney that every time a man gets up on a machine on a job he has run that machine before?

A I am telling you when a man is sent out to do a particular job, whether it is one machine or two machines, the man is capable of running the machine.

Q Now, listen to my question and try to answer it, please. I am talking about a man who is on the job already working for a contractor.

You are telling me that every time that contractor asks him to get up on a different piece of equipment he has always run that equipment before?

MR. BRADY: May I raise an objection? Do you mean a particular machine?

THE COURT: It might have happened once or a million times, the way your question is framed.

MR. DEVORKIN: The man is saying, 'Never."

THE COURT: I do not know whether this witness could say that. At one time there may be an occasion when somebody was operating one type of equipment went

and operated another type of equipment that he hadn't operated before but was of the same general type. If that is your question, okay, it could have happened, but what is it probative of, if it only happened just once or a million times -- the way the question is drawn it never happened.

MR. DEVORKIN: I will withdraw the question.

BY MR. DEVORKIN:

Q Is it rare for that to happen, Mr. Maguire?

A The way you questioned me or the way I explained it to you?

Q The way I questioned you, sir.

A Very rare. I never could see a thing like that. No, I don't understand it, unless a fellow got up on his own and did it. I can't understand -- and they are telling him to go up on a piece of equipment.

Q If you know, Mr. Maguire, has it ever occurred where a Local 15 man who is operating a dozer gets up at lunchtime or at another time on the job when there is a break and learns to operate a crane?

A It could happen but I would not know about it. It could happen -- with the operator's permission it could happen.

Q But you don't know one way or another yourself?

A I couldn't swear -- I wouldn't say that it couldn't happen; it's possible. There wouldn't be anything wrong with that whether the man be black or white, if he did a thing like that.

Q Well, these cranes are very expensive pieces of equipment.

A If the operator and the contractor gave the man permission, there would be nothing wrong with that.

Q How much do some of these new cranes cost?

A What do you mean -- the big ones?

Q Yes.

A Oh, they run half a million dollars.

Q And is it a fact that Local 15 never had a formal apprenticeship program, is that correct?

A Never had a formal one -- a State one or a City one, or are you talking about any Governmental formal one?

Q I am talking about the union one.

A The one we have now, that is what we call our apprenticeship program.

Q What is that?

A The one we have at Kennedy Airport.

Q What is that?

A Well, we have an apprenticeship program that the men pay five cents an hour out of their pay into an

apprenticeship where we have twenty pieces of equipment that we rent, with the instructors at Kennedy Airport -- land that we got from the Port Authority -- Lefferts Boulevard, and that's when we have our school.

Q How many operators are at that school, by the way?

A There are 47 or 48 at the present time.

Q How many instructors are there?

A There are about eight or nine.

Q Eight or nine instructors at the school?

A One man between two machines.

Q There are eight or nine inspectors at the school?

A Yes, and two supervisors, yes.

Q Each Saturday.

A That's right, sir.

3.2 Q Is this apprentice program registered with the International Union?

A No, we are not registered with no International Union.

Q It is not?

A It is our own program.

Q The men in this apprentice program --

A No, they are not registered with the International.

Q And they are not registered as apprentice

engineers with the International?

A No, they are all our own men. We get them from the minority groups.

Q From the minorities?

A From the minorities.

Q Who runs the school?

A A fellow named Raffles, or something like that.

Q That is who is at the school, the minorities?

A Most of them. They are about 47 or 48 -- there's 28 black and 20 white, I believe.

Q These are not registered apprentice engineers with the local union either; are they?

A They are all taken from a list that the local union has got up.

Q Have you ever registered them as apprentice engineers?

A What do you mean by "registered"?

Q Signed them up as an apprentice engineer.

A They are signed up to go to the school, yes.

Q What are the requirements for your apprentice program?

A They fill out an application -- I haven't got one with me -- I guess some of the witnesses will bring some with them.

Q Yes, and how long is a man in this program?

A Pardon me?

Q How long is a man in this program?

A Well, some of them graduate -- some of them are better than others. We have better luck with the fellows from the Islands, the blacks, if you want to call them that -- they don't want to be called blacks, but from Nassau and the possessions, than we do with our own black people here, because they are all high school graduates and they all have a high school education, and they all pretty much know something about equipment when they come here -- and I will say to you truthfully that they get out of school, some of them -- a few of them get out in six months and a few in a year.

Q And then they are done with the apprentice program?

A That is right, they go right out to work and into the union, and they are out working.

Q And most of the American blacks don't?

A We have a little trouble -- not most of them -- with a good percentage of them.

Q What kind of trouble?

A You see, these hands [indicating] will only do what the mind tells you to do, and in this business of

ours -- and again, safety and skill, it is all operation, it is all with the hands and you have to have the head to work with the hands, and in some cases it takes a fellow a little longer to get it into his head just what to do, whereas a fellow that has a little bit of a further education -- you have to forget that some of these fellows haven't went to the fifth grade.

Q A lot of them haven't gone --

A A lot of them haven't gone, that is right. You would be surprised.

Q Are blacks pretty slow to learn?

A Pretty slow.

Q Do you have any trouble with them?

A Well, I have a little trouble but we do get over it. They have always gotten shorts and co-makers.

Q I'm sorry?

A They always want co-makers.

Q I don't understand. What does that mean?

A Well, they are looking for hand-outs, but we get by --

Q What does "shorts" mean?

A Did you ever have a shorts? Short of money.

Q Pardon me?

A Short of money.

Q They are short of money?

A Yes, they can't get enough of it.

Q Can't get enough of it.

A We will have a little trouble with them, I will say that.

Q Any other kind of trouble? Do they complain a lot?

A Any what?

Q Do they complain a lot?

A Oh, yes, they complain because they don't get enough work. We try to be fair with them, the same with the whites.

Q Are they pretty loud-mouthed?

A No, I think that the majority of them are pretty good. There's a few that's a little off base, but they come around.

Q Have you ever received any requests from the New York State Department of Labor to set up an apprentice program?

A Oh, some years ago, but I went into my own plan because I saw what some of these plans were doing and I wasn't happy with it, and I figured our own plan would be the best, and we found out that it is working out the best.

Q Why weren't you happy with the other plans?

A Well, some of the things that I saw I didn't like.

Q What was that?

A Well, I would rather not discuss it. I couldn't put my finger on it. I just wasn't happy.

Q Well, was there some particular reason?

A Well, I don't think that they were getting enough of attention, and it was more less put on.

Q Whose plans were these?

A This thing of ours -- you have to be able to run or you don't run it. You have a machine to take care of . You see, in some of the trades you really need classroom work, you definitely need classroom work. Again, I say that I don't think that our men, getting back again to these fellows, because they haven't got an education, there is no reason why they couldn't become operators -- there is no reason whatsoever, but they are just a little slow in picking it up, and as I told you, compared to our fellows from the -- fellows from the Islands, you know, are very mouthy -- I don't think that they care a lot about our black brothers here in the States too much -- I don't know, from what I can see about them, but I was told that I have to take them

even though they are not citizens, they are considered minorities, so I am up against it, so there's nothing I can do about it.

I was always of the opinion that a fellow had to be a citizen of the United States, but I was put down on that, and they said, "No, that isn't so, they are minorities, you have to take care of them."

Q Do you remember who told you that?

A Yes, right before this Human Rights, and that is why they are in there.

Q That is why they are in there?

A That is why they are in there, in the school, and that is why -- they will be down here testifying, you will hear some of them. They got books, you know.

Q In other words, they wouldn't be here.

A If they weren't citizens -- no, if I didn't have to take them, not being citizens I wouldn't take them. I would take my own black fellows right from the City of New York, Number One. I didn't think I had to take them from other states until I was told yes, I do.

Q Did the Human Rights Commission tell you that, too?

A I was told that by the Human Rights, sure, no matter where they come from.

Q Did they tell you anything else?

A Pardon me?

3.3pm Q Did they tell you anything else?

A What do you mean, "anything else"?

MR. BRADY: That might cover an awful lot of information, your Honor.

A [continuing] I told you all I want to tell you.

Q Now back in 1963 Local 15 was supposed to be setting up an apprentice program with the State, wasn't it?

A Yes, we started off that way. We couldn't get no land. If you wanted to buy a piece of property here, you didn't have enough money to do it.

Q Was 15A ever in an apprentice program for awhile?

A Yes, it was, it certainly was -- it was not an apprentice -- it was what we called in the early days when we had it, we used to call them oilers, and then we got away from that, and when the law changed we called them junior engineers.

When all this apprentice thing started we said, "Listen, these fellows are going to be working -- they are not going to be oilers, so put down 'junior engineers.'"

Q Are there any formal rules for transferring from 15C to 15?

A No. I will tell you the rule if you want to know

it. The rule is to make sure you are a good mechanic, that you are a certified welder or that you can run a piece of equipment.

Q In 1966 was there any rule on that?

A No, not to my knowledge.

Q A man had to stay in 15C for a certain period of time?

A In 15C?

Q Yes.

A Other than the time I specified to you now.

Q He did not have to stay in there three years before he switched to 15?

A There might have been something in which he got his license for welding or he became a mechanic -- he couldn't become a mechanic in less than three years if he started as a helper on the job, and that we would know how he started in the job. It was to try to prevent them at the time from just using 15C as a bumper block, using that as a stepping stone to get on the outside, and we found out that the roc man and the field engineers, when we took them over, I said: "Gee whiz, these fellows are not trying to use this as a stepping stone to get into the outside," and there is a prohibitive thing on that -- we don't allow that, unless the fellow can do

something.

Q A lot of them want to transfer over?

A Oh, everybody would like to be in 15 -- everybody.

Q Why is that?

A Why, because just to get in there, if they could work and be able to do something they wouldn't have any problem getting in.

Q You don't want any more men in 15?

A Oh, sure I do, if they got anything -- why not? But right now it is a bum time to take anybody in because it wouldn't do anybody any any good. They would be sitting on the bench.

Q Have you ever had any kind of a program where men worked as apprentices at less than scale and then over a period of time are upgraded into the unions to work at school?

A No. The only thing I have going now is my trainee program.

Q Your trainee program?

A Yes. That is run by the Board of -- the Board of Urban Affairs. I believe we start them off at $5 an hour or $5.25 -- I don't have the figures in front of me -- and every six months they get a 25¢ increase, and then it takes a period of up to -- I don't know how they

got it worked out -- four years or so, and they become on their own ability full-fledged operators or full-fledged mechanics. In most cases they are mechanics.

Q They are not operators?

A Some of them are. Some of them learn to be operators.

Q How do you get into that program?

A The Board of Urban Affairs of the City of New York.

Q Is that the Building and Construction Industry Board of Urban Affairs?

A I believe so, yes. That is the one that Raffles and them are sold on.

Q Who gets into that?

A Mostly black -- all black I have.

Q It takes them four years --

A It don't take them four years. I am just hitting at a figure of four years. That is the way they have the program set up. I didn't set the program up.

Q But you are satisfied it gives them good training?

A Oh, yes, it does, it works.

Q What do you know about the program?

A The little bit I know about it, the men are

working on the job and earning good money and they are getting vacations and welfare and benefits, and pension benefits and everything else.

Q And they get training on the job?

A Yes, sure,to the best of my knowledge they are getting training.

Q You have spoken about this training school that you have.

A Correct.

Q Is that out at Kennedy Airport?

A Yes.

Q Who runs that?

A Local 15.

Q Which business agents run it?

A I have two business representatives out there, if you don't mind -- a fellow named Dan Murphy and Frank Guna. They spend their full times out there on Saturday, and they keep all the records during the week of all the apprentices, you know -- the fellows going to the school. They give the test -- they set up the test -- the supervisors give the test when so many are ready to be tested.

Q And how do people learn about that training school, if you know?

A Oh, gee, they learn all right. We have about 200 waiting. They will show you a list, I guess, when they come in.

Q Is there anything in the union hall or the offices which posts the training school?

A You don't have to do that in the union hall or the office. Word of mouth is all they have. They get it around.

Q Do you announce openings at the school at your union meetings?

A Oh, yes, at every meeting it is announced about the school.

Q The men at the union meetings are already in the union?

A Oh, yes, they are working to get their sons and their son-in-laws there.

Q And they sign up at the meetings for that school?

A No, they get a hold of the two business representatives and put their names on the list. They bring the kids over on a Saturday and sign and fill out the application. They don't do it at no regular meetings. Whoever the parties are that they have, they must fill out their application and their picture must be taken -- two pictures of them.

Q And how many men are in the training program at one time?

A I think there is 47, between 47 -- 45 and 50. I think 47 was at the last Saturday class.

Q And on the average, if you know, how long would it take a man to graduate?

3.4 pm

MR. BRADY: Your Honor, we have gone over these very questions, how many there are in the program and how long it takes.

THE COURT: Go ahead.

A I don't know. It is up to the man himself. I would say a fellow that has good knowledge, he could do it in a year, eighteen months, and get on to every piece of equipment by that time.

Q So you can graduate about fifty members a year from the school?

A How many?

Q Fifty, roughly?

A No, I don't think we could graduate that. I would say that --

Q 25?

A I don't have the records of how many we graduated. They have the records of how many.

Q But it wouldn't be as many as fifty?

A I don't think it is fifty. Some take longer.

Q Do you have any manuals out there that you use for these fellows?

A They have some manuals. I don't know.

Q Show them any films?

A No, I don't show no films out there. The only films we show, the union meeting, the safety films.

Q Have you ever visited any of the programs that the Army runs?

A Pardon me?

Q Have you ever visited any of the training programs?

A I told you this morning I have not.

Q Any of the programs that Job Corps runs?

A Whose?

Q Job Corps.

A No.

Q Do you know anything --

A I was down to the Job Corps, I visited that, excuse me. Our own job corps thing. It is a classroom.

Q It is no good?

A Well, I am not saying it is no good. I am telling you my feelings.

If I wanted to be a lawyer I would go to law school or go to the University and become a lawyer. If I want to run a machine, I am going to run a machine.

Q Does the industry need qualified people today?

A No, they don't, not right now in this area. Certain parts of the country they do.

Q How about six months ago?

A We were fairly good six months ago. The building boom licked us in the City, the environmentalists really put us out of business.

It doesn't look any better for 1975, I can tell you that, according to the BNA report.

Q If you know, do you know historically what percentage of 14 men are transferred from 15 ? It's about 50%, isn't it?

MR. KENNEDY: I object. He asked the witness a question and then he forgets an answer.

A I couldn't give you an answer on this. If you asked me how many men from 15 transferred, maybe that is --

MR. DEVORKIN: May I have the Court's indulgence one moment?

Q Again, do you remember testifying before the Human Rights Commission, 1963, sir?

MR. BRADY: What are you reading from?

Q Do you remember that, Mr. Maguire?

A Just tell me what it is about. I remember going down there but what I said I don't remember.

Q Reading from Government Exhibit 13A, Page 153, do you remember being asked this question and giving this answer:

"Question: You have already said that but I think it may be helpful as far as Local 15 is concerned and the others you are working closely with Mr. Paine on this thing?

"THE COURT: I am very much in favor of it not only that, but as the previous speakers of other local unions this morning, 50% of those men that went to Local 14 were taken from Local 15."

A Well, that was what year?

Q 1963.

A And this is 1974, this is eleven years ago.

Q Was it true when you said it then?

A I couldn't say, it was approximately true. It was vaguely about right.

Q Was it true?

A At that time, but it isn't true today.

Q Was it true then?

A Not to the best of my knowledge.

Q Were you under oath when you gave that testimony?

MR. KENNEDY: Your Honor --

THE WITNESS: Just a minute.

MR. BRADY: Your Honor, he asked him the same question twice. Mr. Maguire admitted in that answer that he gave that answer and said it is true and it is not true today and he asked him as if he said something else.

Q Was it true at the time?

A In 1963 I said it.

MR. BRADY: He said it was and he asked him as if he said something else.

MR. KENNEDY: I have a different objection. I think the document speaks for itself. Mr. Maguire's testimony is as to the statement of a previous speaker.

THE COURT: He didn't say the previous speaker.

MR. KENNEDY: But I understand from the Government's reading of the answer, he says, "I am very much in favor of it. Not only that, but as you heard the previous speakers of the other local unions this morning, 50% of those men who went to Local 14 are taken from 15."

He is adopting it for one reason or another, what previous speakers have said.

THE COURT: But he is adopting it.

Let us try to move along. We are getting into semantics.

BY MR. DEVORKIN:

Q Local 15 men do learn 14 equipment, right?

A What?

Q Local 15 men do learn to operate 14 equipment?

A Yes, they do.

Q In fact, Local 15 is really an apprentice program for Local 14, isn't it?

A No.

Q It is not? You never said so before, have you?

A Well, I may have said it before but there is no doubt about saying it before as I explained to you, we had oilers, that was really the place for oilers to go

up on the rig when you have two-man rigs. That is where the oiler would go and get his experience.

Q Did Local 15 ever certify men to Local 14 as apprentices?

A Did Local 15 ever certify men what?

Q Men to Local 14 as apprentices.

A I don't follow that one. It doesn't make sense. You must be reading out of a different book.

Q Again, reading from Plaintiff's Exhibit 13B in evidence, Page 796:

"Question: What are the rules for acceptance? Is it mandatory for the local to accept them ?

"MR. ROGERS: No.

"MR. MAGUIRE: Absolutely not.

"MR. ROGERS: The transfer is strictly up to the local receiving the member.

"MR. VALLON: This doesn't prevail in other internationals. Let us not be that surprised. In other internationals it is mandatory.

"MR. MAGUIRE: Sure, it is.

"MR. VALLON: This is the reason we are asking this question.

"MR. MAGUIRE: Not in our international.

"MR. VALLON: We had a man testify that if he

doesn't and transfers he is subject to a fine.

"MR. MAGUIRE: Sure.

"MR. VALLON: What we are trying to find out, and this is not a question of trying to pull teeth or trying to make this an adversary hearing, if there are differences between your union and others, we are here to find out.

"First we want to find out is it mandatory for them to accept a clearance on a transfer.

"MR. ROGERS: No.

"MR. VALLON : Do you consider that your union is at the time an apprenticeship program for 14?

"[Mr. Rogers shakes head from side to side.]

"MR. MAGUIRE: I would say yes.

"MR. VALLON: Mr. Rogers shook his nead.

"MR. MAGUIRE: Who are you asking, him or me?

"MR. VALLON: You are both testifying.

"MR. MAGUIRE: I am answering your question. We consider it.

"MR. VALLON: You consider it to be an apprenticeship program?

"MR. MAGUIRE: That's right.

"MR. VALLON: Is there a formal agreement between you?

"MR. MAGUIRE: No. Just by words. Over the years since 1920."

Was that true at that time?

A Up until that time I said it is so. It is not so today.

4.2pm

Q When did it change?

A Isn't that when you said I testified, in 1963?

Q This was 1966.

A 1966, that is the time.

Q It changed right then?

A That is when the law went in, the Taft-Hartley and the Landrom-Griffin. It was changed from that time on.

Q It was true in 1966, wasn't it?

A That is right. Whatever year it was.

Q Taft-Hartley was 1948.

A When I said that was right, after that it changed.

Q Who changed it?

A We changed it in the union.

Q Just after you testified there?

A Pardon me?

Q Just after you testified there?

A No. It wasn't after we testified. It was something that came up. I just don't recall it now, but

they weren't accepting transfers and there was no sense of arguing with this sister local demanding that they take them or anything like that so we let it go at that and said no more apprentices, if you want to call it, for Local 14.

Q You told us that Local 15 has some non-union operators working, is that correct?

A Every local union I guess has permit men working. But the only thing with us we don't have permit men, after they are out for a certain length of time, and able to operate, they are taken into the union. Some local unions have permit men before they are brought before the examining committees and like Local 14, until they get their license.

Q Does Local 14 have permit men?

A I don't know enough about their operation today.

Q Do they have permit men in Local 14?

A I don't know how many they have. I am not acquainted with it.

Q But take last year.

A I couldn't testify to how many they have or how many they have now.

Q But do non-union men work in trade jurisdictions of Local 14?

MR. KENNEDY: That question was asked three different ways and answered three different times and I am objecting to this continued question about Local 14 on this particular subject.

THE COURT: Haven't you got the answer you want yet?

MR. DEVORKIN: This is cross-examination and I should have a little leeway.

THE COURT: That doesn't mean you have to ask the same question.

MR. DEVORKIN: I will move on.

BY MR. DEVORKIN:

Q Have you ever been around the day room when Local 14 work is given out by Local 14 business agents?

A I see the business agents giving out work.

Q What happens when a black person walks into the hall?

A What?

Q A black person walks into that hall, anything in particular happen?

MR. KENNEDY: I object to the form of that question. It is too vague and speculative. Do you mean a member or a permit man?

THE COURT: Applies for a job.

Q When a black person is looking for work from either 14 or 15.

MR. KENNEDY : He should specify whether it is a member or a non-member.

Q I don't care if it is a member or non-member either.

THE COURT: Let us have a member.

MR. BRADY: Which union?

A That's right.

THE COURT: Either one, I don't know.

THE WITNESS: I can't give you an answer to 14.

Q Sir, would you listen to my question and then give me an answer?

When a black person walks into your day room which you share with Local 14, looking for work, whether he is a non-union member, does anything particular happen because he is a black member?

A No.

Q Nothing?

A No.

Q Have you ever stood next to a Local 14 official when a black person has walked into your day room and heard him say, "Here comes one of yours."

A No.

Q That never happened?

A I never heard it. I never heard that remark. And if he did, he would be telling the truth, it would be one of mine.

Q Local 14 refers him to you?

A What is that?

Q He is one of yours, the black person?

A If he said to me, I would say sure, he is one of mine.

Q Do 14 officers refer --

A Whether he was or not, he is one of mine.

Q Do 14 officers refer all black persons looking for work to you?

A Well, they might refer them, not to me personally.

Q To your union?

A I wouldn't know how many they refer or who they refer them to, I don't know. I know they referred them.

Q Does Local 15 hold meetings of its membership?

A Sure.

Q How often?

A What branch, what local?

Q Let us take each branch.

A You name them.

Q 15, 15A.

A Every month.

Q 15B.

A Every quarter.

Q 15C.

A Every quarter.

Q 15D.

A Every quarter.

Q Do you have executive board meetings for the local?

A Every week.

Q Are notes or minutes kept of those meetings?

A Every one.

Q Who keeps those notes?

A The recording corresponding secretary.

Q What kind of notes are taken, what is put in the notes?

A Whatever goes on at the meeting.

Q Do you keep those records on file?

A Absolutely.

Q Are they used by the union as union records?

A That is right.

Q Have you ever discussed this lawsuit in union meetings?

A This one here?

Q Yes, sir.

A No.

MR. DEVORKIN: I offer in evidence Plaintiff's Exhibit 11 for identification.

THE COURT: He hasn't answered the question.

A What do you mean by discussing, with who?

MR. DEVORKIN: I thought he answered no.

A [continuing] Discussed with who, sir?

Q As a topic of business.

A No. We might discuss it at board meetings but we don't as a rule, never discuss it at a union meeting. There was nothing to discuss, only to say, I think we probably said that we were down before the Federal District Attorney in -- when we were down last year or 1973.

MR. DEVORKIN: I would like to offer Plaintiff's Exhibit 11 for identification which is a collection of various Local 15 regular meeting minutes and executive board meetings.

MR. BRADY: Can I ask the purpose of the offer, your Honor?

THE COURT: Yes, what is the purpose?

MR. DEVORKIN: The purpose of the offer is these are official records kept by the union and reflect the

union's policy and statements about certain --

THE COURT: Received.

*** [Plaintiff's Exhibit 11 for identification received in evidence.]

MR. BRADY: Are they being offered for a specific -- is there a specific reference to pages being used to contradict or impeach anything Mr. Maguire said?

THE COURT: Not that I know of at the moment. I am receiving these as being admissible for all purposes. What use is made of them, I don't know.

Q Does Local 15 have a pension and welfare fund?

A Yes.

Q You serve as a trustee on this fund?

A Yes. It is a joint fund.

Q Joint, managed by who?

A Joint up until -- it will be separate after July 1975.

Q For 14 and 15, they are in the same fund?

A They are right now.

Q How do the employers make contributions to that fund?

A Five per cent of wages -- five per cent pension and five per cent welfare of the wages, total wages.

Q Of an employee's total wages?

A Employee's total wages.

Q When is the contributing employee eligible for benefits?

A I think it is , if I remember -- I don't think it changed since -- age 62 and fifteen years.

MR. BRADY: May I inquire as to the purpose of the line of questioning since the funds are not a party to this suit? We are talking about discrimination in employment as I understand it.

THE COURT: Well, perhaps it is discrimination as far as employment.

MR. BRADY: They haven't been made parties of the complaint.

THE COURT: I will take it.

Q That would be the pension benefits, is that right?

A Yes, sir.

Q What about the welfare benefits?

A Welfare is for themselves, their wife and children until the 19th birthday.

Q The health benefits?

A And full dental care.

Q How long does a man have to work before he can get health benefits?

A He has got to be a member of the union for six months.

Q Does every employee in the industry --

A Pardon me?

Q Does every employee in the industry have a contribution made for him if he works for a contracting employer?

A Those that have a, branches that belong to the welfare and pension , 15, 15A, 15C and 15D. 15B does not, they have their own health and welfare and pension handled by their own people out at the race tracks.

Q If a permit man works the employer makes a contribution for him?

A Treated just as if he -- welfare and pension is treated just as if he were a union member, paid-up member.

Q But the employer contributes for him?

A He gets his benefits.

Q When does he get his benefits?

A Whenever he asks for them. What benefits are you talking about, welfare?

Q Health benefits, welfare benefits.

A That is right. If it is coming to him within six months -- he wouldn't be on the permit to start out

I think six months. But the only ones that would be, the trainees more or less are a permit man, but he is entitled to some welfare and pension benefits.

Q But a man has to be a book man for six months then to get his welfare?

A His welfare, full benefits.

Q A book man means a union man?

A When he gets his union card.

Q They call one of those cards a book?

A That is right.

Q Are those cards used for identification on the job?

A Well, one must show the other the card if they are challenged.

Q What do you mean by challenged?

A A fellow says he got a card and he has to show him his card first.

Q Why do they ever have to show him the card?

A See if he is a union man.

Q A non-union man can't work?

A He can work. He can't knock him off but he wants to know if he is a union man.

Q What is the purpose of the challenge?

A That is his business to do it.

Q What is the purpose of the challenge?

A Just to find out if he is a union card holder.

Q Just to know whether or not?

A There is no harm in that.

Q But if he doesn't hold a card, what happens?

A Nothing can happen.

Q Does the Union have a annuity program?

A No, I told you that before.

Q Does the union maintain a training fund?

MR. BRADY: Objection, your Honor, we went into the whole trainee and apprentice program for two hours.

THE COURT: He asked about a trainee fund.

MR. BRADY: He testified that the employer contributed five cents an hour to the fund this morning and again this afternoon.

A The employees contribute five cents an hour.

Q And that man if he is a permit man or union man, the employer contributes, correct?

MR. BRADY: Excuse me, the employee contributes.

A Every one of them.

MR. DEVORKIN: If I wanted to call Mr. Brady to the stand I would ask him a question. I asked a question of Mr. Maguire.

MR. BRADY: If your Honor pleases, Mr. Maguire

said an employee contributes and Mr. Devorkin said the employer contributes. I was just correcting what was the testimony.

THE WITNESS: I said the employee, Judge.

THE COURT: We will take a recess.

[Recess.]

BY MR. DEVORKIN:

Q Mr. Maguire, could you generally tell us what in your view is the purpose of Local 15, the reason for its existence?

MR. BRADY: Objection. We were here all morning testifying to the purposes and functions.

THE COURT: I know it. To save time we will get it out. It may be repetitious.

MR. CORCORAN: Could we have this understanding? I say this respectfully that in lieu of making any objections on a particular question, can we reserve our rights so that we can move to strike out what may be regarded as irrelevant and immaterial questions so that --

THE COURT: I will determine what is relevant and material. This is a proper question.

BY MR. DEVORKIN:

Q Tell us, just tell us in your opinion what the union's purpose is vis-a-vis providing services to its

members in this city. What is your opinion on this subject?

A Providing service as to its members?

Q Yes.

A I don't think I follow the question. In what way providing services to the members?

Q Do you think the union has any function in providing services to its members?

A Yes.

Q What would those services be?

A Number One, it is the good and welfare of its members; Number Two, see that they are employed; Number Three, after they are employed, to see they are given the right protection under the contract and, Number Four, see that they do a fair day's work for a fair day's pay with the contractor who is paying them.

THE COURT: Who bargains for them?

THE WITNESS: We do.

Q Are there any advantages that you know of to being a member in this city in this trade?

A Oh, yes, very much so.

Q What would they be?

A The pension, Number One; the health and welfare benefits, Number Two; the wage scales and the conditions.

Q If a man is non-union and working in this city in your trade he gets the union scale and those other benefits, doesn't he?

Besides those are there any other advantages?

A I don't think that you will find many men in this city working in our trade that is non-union . I gave you that data this morning. I said that we were between 95 and 99% union as of now.

Q Mr. Maguire, I am going to show you Plaintiff's Exhibit 5A for identification, 5B and 5C. Those are the constitutions of the International Union of Operating Engineers for April 6th, 1960, 1964 and 1968, are they not?

A Yes.

MR. DEVORKIN: I would move 5A, B and C in evidence.

MR. BRADY: Will you let us look at these items first?

MR. DEVORKIN: He identified them and I move into evidence.

THE COURT: I thought you identified them and you are in a hurry to leave.

THE WITNESS: I did, your Honor.

MR. BRADY: I am sorry, I didn't hear him identify

them.

THE COURT: Received in evidence.

[Plaintiff's Exhibits 5A, B and C for identification received in evidence.]

Q I hand you Plaintiff's Exhibit 7 for identification, Mr. Maguire, and ask you if you recognize it.

A Yes.

Q Those are the bylaws of Local 15, are they not?

A Yes.

MR. DEVORKIN: I move 7 into evidence, your Honor.

THE COURT: Received in evidence.

[Plaintiff's Exhibit 7 for identification received in evidence.]

Q I hand you a copy of a letter, Mr. Maguire, Plaintiff's Exhibit 36, and ask you if you recognize it.

A Yes, sir.

Q That is a letter you wrote in 1967 to the City Commission of Human Rights, is it not?

A Yes.

MR. DEVORKIN: I move 36 into evidence, your Honor.

THE COURT: Received.

[Plaintiff's Exhibit 36 for identification

received in evidence.]

Q I show you Plaintiff's Exhibits 40A, B and C and D for identification, Mr. Maguire.

MR.DEVORKIN: Perhaps I can save time and ask for a stipulation into evidence for all of these exhibits not received, the ones I am going to use are the collective bargining agreements in the trade. I can read the numbers and then we can just move them into evidence if the defendants have no objection.

THE COURT: Are they the ones as to which there was no question as to authenticity?

MR. DEVORKIN: I believe that is correct,your Honor.

THE COURT: How many do you have?

MR. DEVORKIN: About twenty. I can just read the numbers.

THE COURT: And you want this witness to identify them all, is that it?

MR. DEVORKIN: Or the parties agree to their admission. They have had them for a long time -- in fact they produced them for us.

THE COURT: I will receive them in evidence.

MR. DEVORKIN: May I just read the numbers?

THE COURT: Yes, if they are what they are represented to be, merely bargaining contracts.

THE WITNESS: Yes, bargaining contracts with the General Contractors Association, these here. [Indicating.]

THE COURT: All right, they will be received in evidence. It would seem to me they may be relevant, and if there is no dispute as to their authenticity they will be received in evidence.

MR. DEVORKIN: I will give the Clerk a full list.

THE COURT: Yes, that will save this witness' time in going through that. Read the numbers.

MR. DEVORKIN: I will give you the list of what they are to the Court Reporter and the Clerk.

40A, B, C and D.

41A.

42A.

43A.

44A and C.

48A, B and C.

49A, B and C.

50A.

51A, B, C, D.

52A, B, C, D.

53A.

54A, B, C, D, E, F.

55A.

56A.

57A.

58A.

59A.

60A and B.

*** [The following exhibits received in evidence: 40A, B, C and D; 41A; 42A; 43A, 44A and C; 48A, B and C; 49A, B and C; 50A; 51A, B, C and D; 52A, B, C and D. 53A, 54A, B, C, D, E and F. 55A; 56A; 57A; 58A; 59A, 60A and B.]

MR. DEVORKIN: I have no further questions of

this witness.

MR. GALLAGHER: Is that list being read for the purpose of us objecting or concurring?

THE COURT: They are received in evidence. If you want to object, you are still in this lawsuit.

MR. GALLAGHER: What I would like to refer to is Plaintiff's Exhibit 52 and the designation in the proposed pre-trial order that has been submitted to me, namely, that the contracts referred to therein are contracts between the General Contractors Assocation of New York City and Local 15D. I take exception to that in behalf of General Contractors Association. Deposition of General Contractors Association is that it has no collective bargaining agreements. Its members may have but it has not.

MR. DEVORKIN: Your Honor, I did not read that exhibit number into evidence.

MR. GALLAGHER: You did, 52A, B, C and D.

MR. DEVORKIN: No, I did not read it, and I did not offer it.

[Record read by the Reporter.]

MR. DEVORKIN: Then I withdraw the 52's and 53 -- I am not offering any of the 52's or 53's.

MR. GALLAGHER: In that event I will withdraw

my objection, your Honor.

MR. DEVORKIN: I am sorry.

THE COURT: All right.

I still am troubled that the pre-trial order has not been signed by the parties, and there may be some dispute as to that. We got through today, and we might get through another day without it being signed, but Mr. Gallagher would like to know what the issues are here and whether he is wasting his time sitting around here. I think certainly so far as the General Contractors Association are concerned that some decision ought to be reached, are they involved or are they not involved, between now and Monday or Thursday, or whatever the next day is of our meeting.

MR. GALLAGHER: My understanding is, again repeating what was said this morning, that there is no potential liability.

THE COURT: Yes. But, you know, the thing is that this has not been signed.

MR. GALLAGHER: I understand that from Government counsel.

THE COURT: It has been signed by the Government, then I suppose it is binding.

MR. DEVORKIN: That is correct. We contend they

are properly named as a party.

MR. GALLAGHER: They say we have no liability and there is no contention by the Government of our liability, except that in the proposed pre-trial order there is a recital --

THE COURT: You mentioned that this morning and I was hoping that that possibly could be cleared up between now and Monday or between now and -- are we skipping Tuesday and Wednesday?

MR. DEVORKIN: Yes.

THE COURT: Let us say between now and Thursday.

MR. GALLAGHER: We are back here on Monday.

THE COURT: I am having a hearing then.

MR. GALLAGHER: I understood this was an acceleration day today for Monday. I did not know what was happening beyond that.

THE COURT: I will tell you, I am accelerating everything. That is why I am accelerating the case because I have the feeling that these things last longer than they should.

MR. GALLAGHER: I would like an acceleration as to whether I should be here on Monday.

THE COURT: Well, I will tell you right now, if I were you, I would be here.

MR. KENNEDY: Your Honor, on behalf of Local 14 I have agreed with the Government. I have a few minor changes or suggestions, and I have agreed to give those to Mr. Devorkin on Monday morning -- they are minor changes.

THE COURT: You are speaking about the pre-trial order?

MR. KENNEDY: Yes, your Honor.

THE COURT: Is that true for both locals?

MR. BRADY: Yes. Today I gave my proposed changes to Mr. Devorkin.

THE COURT: All right. Then I would think by Monday, or at least by Thursday we would have a signed pre-trial order and I would have some guidance so that I can -- you see, it is a little difficult to channel what is relevant and what is not relevant without knowing what the parties have agreed are the issues.

MR. GALLAGHER: Correct.

THE COURT: I would like to have Mr. Gallagher here. He probably feels he should not be here, that his client is not involved, and I agree with him.

Well, we will adjourn until 10:30 on Monday morning.

MR. DEVORKIN: Your Honor, may I ask a question:

Are we sitting next Thursday and Friday, also?

THE COURT: Whatever days you desire, yes.

MR. DEVORKIN: Mr. Maguire is not going to be cross-examined?

THE COURT: I assumed you wanted him here today. You had him here today. He is not expected back until what -- the 25th or whatever it is.

THE WITNESS: Yes.

THE COURT: At which time I assume if they want to cross-examine him they will cross-examine him.

MR. BRADY: That is right. We reserve on that.

THE COURT: But I understand for the purpose of the Government's case they want to get this much in.

MR. DEVORKIN: Yes.

THE COURT: The defendants may not want to cross-examine him.

Very well, I will see you on Monday.

THE CLERK: Court is adjourned until 10:30 Monday morning.

[Adjourned to Monday, September 16, 1974.]

* * *

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs. 72 Civ. 2498

LOCAL 14 INTERNATIONAL UNION OF OPERATING ENGINEEPS, et al.,

Defendants.

New York, September 16, 1974;
10.30 a.m.

Trial resumed.

- -

(Same appearances as before, with additional appearance of French, Fink, Markle & McCallion, Esqs., Attorneys for The Cement League and Building Contractors and Mason Builders' Association; Robert J. Fink, Esq., of Counsel.)

MR. DEVORKIN: Good morning, your Honor. I thought before the government called its first witness we might save some time down the road and take care of a couple of housekeeping matters.

THE COURT: Good.

MR. DEVORKIN: Which would be in the form of my offering certain exhibits at this time.

THE COURT: All right.

MR. DEVORKIN: Your Honor would recall that you instructed me to supply the remaining sections of the

Administrative Code to Government's Exhibit 63 in evidence.

THE COURT: Right.

MR. DEVORKIN: I supply counsel with those, and I will hand that up to the Court (handing).

At this time I would also offer what has been marked for identification as Plaintiff's Exhibit 63-A, which is the Administrative Code on this subject as of 1969, which is the earlier version.

THE COURT: How is that marked?

MR. DEVORKIN: That is part of Exhibit 63.

THE COURT: Mark it as part of Exhibit 63.

MR. DEVORKIN: Then I would offer it in evidence.

MR. KENNEDY: No objection on behalf of Local 14.

MR. BRADY: No objection on behalf of Local 15.

xx (Government's Exhibit 63-A received in evidence.)

MR. DEVORKIN: I would then begin, your Honor, by offering Plaintiff's Exhibits 6-A, 6-B, 6-C and 6-D, which are the by-laws of Locals 14 and 14-B.

THE COURT: I assume there is no objection.

MR. KENNEDY: No objection, your Honor.

MR. BRADY: No objection.

THE COURT: Received in evidence.

(Government's Exhibits 6-A, 6-B, 6C and 6-D received in evidence.)

MR. DEVORKIN: I will hand up to the Court a copy of each of these (handing).

Next I would offer Plaintiff's Exhibit 14 for identification, which is plaintiff's interrogatory to defendant General Contractors Association of New York, Inc., and their answer thereto.

THE COURT: Any objection?

MR. KENNEDY: No objection on behalf of 14, your Honor.

MR. BRADY: No objection on behalf of 15, your Honor.

THE COURT: Received in evidence.

xx (Government's Exhibit 14 received in evidence.)

MR. DEVORKIN: Next I would offer Plaintiff's Exhibit 35 for identification, which is a letter of James R. Dillion to the New York City Commission on Human Rights, dated March 14, 1967.

Mr. Dillion was business manager of Local 14 and 14-B at the time he wrote the letter.

MR. KENNEDY: While I would question its relevancy --

THE COURT: I will receive it in evidence and determine its weight later.

MR. KENNEDY: Absolutely fine, your Honor.

xx (Government's Exhibit 35 received in evidence.)

MR. GALLAGHER: Your Honor, with respect to Mr. Devorkin's submission of Exhibit 14, I would like to have the same reservation about its relevancy if I am kept in this proceeding.

THE COURT: I hope we are going to resolve your status before too long.

Has any progress been made on the pre-trial order?

MR. DEVORKIN: The only issue of contention, so far as I know, between GCA, Mr. Gallagher's client, and the government is that we say they are properly named and he does not feel they are properly named. Now the government cannot back off from that position. Perhaps Mr. Gallagher will.

MR. GALLAGHER: With respect to that, your Honor, again we revert to Friday's discussion that there is no contention of liability which has been admitted by the

government against GCA. For that purpose I would --

THE COURT: As soon as I obtain a stipulation or the pre-trial order is signed by counsel to the effect that the issue of liability has been resolved --

MR. DEVORKIN: That is what the pre-trial order says.

THE COURT: But it isn't signed.

MR. DEVORKIN: That is all we need is Mr. Gallagher's signature.

MR. GALLAGHER: Then there is an aspect that the Government has in the pre-trial order that the General Contractors Association, Inc. is a proper party under Rule 19A for complete relief and I take issue with that, your Honor.

If there could be a severance on the liability and I could be excused from this proceeding with the reservation of rights on whether or not we are a proper party when it comes to relief, then I would --

THE COURT: I don't think the Government would have any objection to that.

MR. DEVORKIN: Mr. Gallagher doesn't have to be here on the issue of liability.

MR. GALLAGHER: If that is contained in the pre-trial order that we are excused from liability with the reservation of the right to contest --

THE COURT: I would suggest that that be made a part of the pre-trial order. It is now on the record as a statement from the Government.

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MR. DEVORKIN: We are going to offer proof as to the behavior of contractors. If Mr. Gallagher -- I want to put Mr. Gallagher on notice that his clients will be members of the association.

THE COURT: The only thing is that possibly the matter could be resolved by your advising Mr. Gallagher when you intend to submit such evidence and he will be here at that time and not have to sit here every day.

MR. GALLAGHER: I must draw a distinction between a party who is a member of our association and the association. The association is a separate organization and any member's conduct should not be imputed to the association.

MR. DEVORKIN: That is a legal question, your Honor. I have a suggestion to propose to Mr. Gallagher during the lunch break. I think after I make my peace with him he may change his mind about contesting that issue.

MR. GALLAGHER: Maybe the reverse is true, your Honor.

MR. DEVORKIN: Anything is possible.

THE COURT: I am delighted to have you here, but I am not going to tell you to be here or not to be here.

MR. DEVORKIN: My next offer is Plaintiffs' Exhibit 37 for identification which is a letter from Ralph

Dalton, president of Local 14 and 14B to the Executive Director of the New York City Commission on Human Rights, dated April 21, 1965.

MR. KENNEDY: Again Local 15, as far as relevance is concerned, that is the only issue.

THE COURT: Very well, it is received. The Court will have to determine the relevancy.

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[Plaintiffs' Exhibit 37 for identification received in evidence.]

MR. DEVORKIN: Next is plaintiffs' Exhibit 38 for identification which is the plaintiffs' Interrogatories Numbers 6, 7 and 17 to Local 15 and 15's Answers thereto.

THE COURT: Received.

MR. BRADY: The only objection we would have would be relevancy.

THE COURT: Of course I am not going to consider what is irrelevant in this case but you can appreciate that without a firm and binding pre-trial order it is very hard for me to determine what is or is not relevant.

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[Plaintiffs' Exhibit 38 for identification received in evidence.]

MR. DEVORKIN: Plaintiffs' Exhibit 39 which is Plaintiffs' Interrogatories 6, 7 and 17 to Local 14 and 14's Answers thereto.

THE COURT: Received on the same basis.

[Plaintiffs' Exhibit 39 for identification received in evidence.]

MR. DEVORKIN: Plaintiffs' Exhibits 45A, B and C for identification, which are collective bargaining agreements between various contractors associations and Local 14.

MR. KENNEDY: No objection.

MR. BRADY: No objection.

[Plaintiffs' Exhibits 45A, B and C for identification received in evidence.]

MR. DEVORKIN: Also, Plaintiffs' Exhibit 46 for identification which is another collective bargaining agreement as to Local 14.

THE COURT: Received. The document will speak for itself, I assume.

[Plaintiffs' Exhibit 46 for identification received in evidence.]

MR. DEVORKIN: Plaintiffs' Exhibit 47 which is another Local 14 collective bargaining agreement.

THE COURT: Received.

[Plaintiffs' Exhibit 47 for identification received in evidence.]

MR. DEVORKIN: And Plaintiffs' Exhibit 61 which

is a wage scale dated July 1, 1974 to December 31, 1974 for Local 14 and 14B.

THE COURT: Received.

[Plaintiffs' Exhibit 61 for identification received in evidence.]

MR. DEVORKIN: The Government calls John Friedman, your Honor.

J O H N H E N R Y F R I E D M A N, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Friedman, are you currently employed?

A No, I am not.

Q What are you doing now?

A I am currently a senior at Yale University.

Q Will you just speak up a little?

A I am currently a senior at Yale University.

Q Were you employed this past summer?

A Yes, I was.

Q How were you employed?

A I was a legal assistant at the United States Attorney's Office, Southern District of New York.

Q For whom did you work?

A I worked for you.

Q Now, I hand you what has been heretofore marked as Plaintiffs' Exhibit 1A, copies which I will supply to counsel.

Do you recognize Plaintiffs' Exhibit 1A?

A Yes.

Q What is it?

A Table I prepared for you this summer.

Q Do you know what the purpose of preparing it was?

A Yes, I do. The purpose was to compare the employment of Spanish language males and black males to the total male labor force in New York City.

Q Do you know on what basis, what data the documents were prepared?

A Yes. They were prepared on the basis of census data.

Q I hand you a copy of Plaintiffs' Exhibit 1B for identification and ask you if you recognize that?

A Yes, I do.

Q What is it?

A It is a United States Department of Commerce publication, general, social and economic characteristics of New York 1970 census of population.

Q Have you ever seen it before?

A Yes, I have. This was the document on which I took my basic statistics for my tables.

Q I hand you Plaintiffs' Exhibit 1 for identification and ask you if you recognize that?

A Yes, I do.

Q What is it?

A These are Xeroxes of the tables that I used from this document that pertain to the five counties of New York.

Q Does that include all of the tables you used from the larger document?

A Yes.

MR. DEVORKIN: I offer Plaintiffs' Exhibit 1 in evidence.

MR. KENNEDY: I object to the offer, your Honor. I don't think that a proper foundation has been laid.

THE COURT: Maybe. Can we get a little more on this witness' background and --

MR. DEVORKIN: Maybe there is some confusion. I am not offering the tables that he prepared yet. I am offering simply copies of the Government publications or data from which he prepared his data. That is Plaintiffs' Exhibit 1.

THE COURT: We haven't gotten to the issue yet.

[Plaintiffs' Exhibit 1 for identification received in evidence.]

MR. BRADY: May I be heard on an objection at this time?

THE COURT: Possibly you should offer all three documents in evidence.

MR. DEVORKIN: The only reason I haven't offered 1B is that it happens to be rather scarce and I would like to retain the original in our office. Counsel have had copies of the relevant tables for ten days now.

THE COURT: All right.

MR. BRADY: Your Honor, the purpose of the offer is to show the population by ethnic breakdown in the five counties, is that correct?

THE COURT: I don't know. I would assume it. It would have some bearing on it.

MR. BRADY: I will reserve my objection.

BY MR. DEVORKIN:

Q As to Plaintiffs' Exhibit 1 for identification, Mr. Friedman, do you still have a copy up there?

A Yes.

Q Can you tell us and the Court what you first did in preparing those tables and charts?

THE COURT: Referring to which exhibit?

MR. DEVORKIN: 1A for identification.

THE COURT: All right.

A The first table I prepared was the table listed as C, Page 8.

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Q Andwhat is Table C?

A Table C is a computation of the total number of Spanish language males above 16 in the Labor Force in New York City's five boroughs.

Q Was there any reason why you used Spanish language males as opposed to Spanish surnamed males?

A Yes. I used Spanish language males because there was no data in the Census Bureau books on Spanish surnamed males in the five counties of New York.

Q Is Spanish language males defined anywhere in Plaintiff's Exhibit 1 in evidence?

A Yes, it is defined on page 7 of Appendix B, in the middle of the page.

Q Would you read that definition for us?

A "Spanish language persons of Spanish language comprise persons of Spanish mother tongue and all other persons and family in which the head or wife reported Spanish as his or her mother tongue."

Q What did you do to prepare Table C?

A What I did was to take the figures for the five boroughs for male Puerto Ricans above 16 in the Labor Force. I took those figures from Table 131 in Government's Exhibit 1-B.

I then took from Table 119, from the same source,

the total Spanish language population and the total Puerto Rican population.

Q You did this for each county in New York City?

A Yes, I did. I then took the fraction -- the ratio of Spanish language population to the Puerto Rican population and multiplied that times the number of male Puerto Ricans in the Labor Force. I assumed in this case that the ratio of Spanish language population to the Puerto Rican population was the same ratio as the male Puerto Ricans in the Labor Force to Spanish laguage in the Labor Force.

Q In other words, the Bureau of Census does not have any figure for Spanish language males in the Labor Force?

A No, it does not.

Q You are making a conversion from population to the Labor Force?

A Yes.

Q And the result of your calculations is in which column?

A The last column -- Spanish language males above 16 in the Labor Force.

Q What did you do next?

A Next I calculated Table B(1),which is the computation of the male Labor Force with a high school

education or less -- that is on page 5 in the tables.

Q Tell us how you prepared Table B(1).

A Well, first let me state that I once broke it down into the five counties in question. I first took the figures from Table 121 to bear on the total male Labor Force in the five counties.

Next I took the number of the total male population 25 or over with a high school education or less -- that is from table 120.

I also took from Table 120 the number of the total male population.

I then divided the total male population with high school education or less by the total male population to find out the percentage of males with high school education or less.

Q In the population?

A In the total population.

Q Then what did you do?

A Then I took this percentage and multiplied it times the total male labor force to find the male labor force with high school education or less in each borough.

Q Did you make any assumptions when you made that multiplication?

A Yes. I assumed the percentage of males with

a high school education or less was the same in the population as it was in the labor force.

Q And the result is the last column on Table B(1)?

A Yes.

Q Did you then total these -- is this figure at the end, 1,533,430, is that the total of the counties in New York City?

A Yes, sir.

Q And this percentage that is shown for the five-county total, what is that based on?

A That is only an approximation of a weighted average of the percentages listed above. If you multiply that percentage by the total numbers -- by the total male labor force, it will be possible to get the male labor force with high school education or less. It is just an approximation.

Q But the last figure there is the accurate figure?

A Yes.

Q What table did you prepare next?

A Next I prepared Table B(2), which is on page 6, which finds similar statistics for the black population.

Q Again in each of the counties?

A Again in each of the counties.

Q Briefly describe for us what you did with respect to Table B(2).

Q Well, first I took from Table 126 the total black male labor force.

I then took from Table 125 the number of black males with a high school education or less, and the number of black males irrespective of education.

I then divided the number of black males with high school education or less by the total number of black males to find the percentage of black males with high school education or less in each county.

In the last column I multiplied the percentage of black males with high school education or less by the total black male labor force to find the number of black males in the labor force with high school education or less.

Q Did you do anything else with that particular page?

A Yes, I did. I found the black male labor force as a percentage of the total male labor force irrespective of education.

Q And that is the figure 16.94 per cent?

A Yes, sir.

Q Which table did you prepare next?

A Next I prepared Table B(3) which is, once again, comparable statistical table for the Spanish language population -- that is found on page 7.

Q Does the Bureau of Census list statistics for the educational level of Spanish language population?

A No, it does not. So on this table when I could not find that data for the Spanish language male population I used data for Puerto Rican males. I did this because this was the closest approximation I could get in that Puerto Rican males constitute the largest number of Spanish-speaking males.

Q And again was Table B(3) prepared similarly to the way you prepared B(2)?

A Yes, it was, the only difference being that I used the figure from Table C for the total Spanish language male labor force because the figures were not available in the Census data.

Q And the last column represents your final conclusions?

A Yes, it does.

Q Did you do anything else on that page?

A Yes, I did. On the bottom lefthand side I calculated the Spanish male labor force as a percentage of the total male labor force, and my figure was 12.67 per

cent.

Q That is irrespective of education?

A Yes, sir.

Q Which table,if any, did you prepare next?

A The next table I prepared put together my calculations, and I prepared Table A(1), which is page 1.

Q Will you tell us what Table A(1) is?

A Well, it is a conclusion. It compares the black males in the labor force with high school education or less and the Spanish language males in the labor force with high school education or less to the total males in the labor force with high school education or less.

And I also, on the bottom,compared the proportions for those two minority groups to the total male labor force irrespective of education.

Q So this 34.97 figure on the far right, on the bottom is the percentage of black and Spanish males in the New York City labor force with high school education or less?

A Yes, as a percentage of the total.

Q And the 29.61 -- what is that?

A That is a percentage of black males and Spanish language males in the labor force irrespective of education.

Q Now did you do anything to determine whether the minority percentages in Table A(1) were too high or too low?

A Yes. I examined another document, other census material to find out if there was any under or overcount involved.

Q I show you Plaintiff's Exhibit 3 for identification (handing). Do you recognize that?

A Yes, I do. It is a Bureau of Labor, Department of Commerce publication, 1970 Census of Population and Housing, Estimates of Coverage of Population by Sex, Race and Age; Demographic Analysis -- and this was issued in February, 1974.

MR. DEVORKIN: Counsel have had a copy of this, and I offer it in evidence.

xx (Plaintiff's Exhibit 3 received in evidence.)

BY MR. DEVORKIN:

Q Did you use any of the tables on Plaintiff's Exhibit 3 in making further calculations?

A Yes, I did. I used Table No. 3 on page 29.

Q And what is Table 3 on page 29?

A It has the title "Preferred Estimates of the Amount and Percentage of Net Under-Enumeration of the

Population By Sex and Race, 1950-1970."

Q As best you understand it, what is net under-enumeration?

A That is the percentage by which the figures published from 1950 to 1970 were undercounted and did not take into account the different races in the male and female population.

Q In other words, on that table the figure shows, for example, that the male negro undercount was 9.9 per cent?

A Yes, it does.

Q And the white male -- the total male undercount, black and white was 3.3 per cent?

A Yes, sir.

Q Did you do anything on the basis of Table 3 with respect to your Table A(1) calculations?

A Yes, I did. I revised my calculations by taking into account this undercount fraction.

Q Describe for us solely and carefully what you did.

A All right. Let me start with males in the labor force with high school education or less. The original total -- total --

Q Where are you referring?

A This is Table A(2), on page 2. It is the second page of my total tables -- the first page of Table A(2), entitled "Corrected Labor Force Figures Based on Undercount Percentages."

Q You are referring to the document that you prepared, is that right?

A Yes, Exhibit 1-A.

Q And what did you do?

A Well, starting in the first row, I took the original total of 1,533,430.

Then I took the undercount fraction, which is .033; then I divided the original total of 1,533,433 by .967, which is 1 minus the undercount fraction.

Q There are some footnotes here which explain why you did that.

A Yes.

Q Where are those footnotes -- on page 4?

A On page 4, which explain how I got to this formula. The way I arrived at it --

Q Well, I think the formula will speak for itself. That is Footnote 2, is it?

A Yes.

Q This is when you performed that multiplication and you arrived at the corrected total?

A Yes. The corrected total for that was 1,585,760.

Q You did the same thing for blacks?

A Right.

Q You did not do it for Spanish language males?

A No, I did not.

Q Why not?

A Because there were no figures involved in the census data.

Q For undercounting Spanish.

A Yes.

Q So you just assumed it was the figure given?

A Yes.

Q And you calculated the correct percentage for black males?

A Yes, sir.

Q And what did you do with that?

A I added that, which was 20.76 per cent. The uncorrected figure for Spanish language males with high school education or less was 15.63 per cent, and I got the corrected minority total of 36.39 per cent.

Q That compares to the uncorrected total of 34.97 per cent?

A Yes.

Q Did you do the same thing with the figures

irrespective of education?

A Yes, I did.

Q That is the next page of Table A(2).

A Right.

Q Page 3?

A Yes.

Q And that corrected total is 30.80 per cent as compared to 29.61 per cent?

A Yes.

Q Now I show you Plaintiff's Exhibit 2-A for identification and ask you if you recognize it (handing)?

A Yes.

Q What is 2-A?

A This is the United States, Department of Commerce publication: Subject: Reports, Occupation by Industry, 1970 Census of Population.

Q I show you Plaintiff's Exhibit 2 for identification and ask you if you recognize it (handing)?

A Yes, this is Table 3 of Occupation by Industry -- a Xerox of it.

MR. DEVORKIN: I offer Plaintiff's Exhibit 2 for identification, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 2 received in evidence.)

xx

MR. DEVORKIN: Your Honor, I would now offer Plaintiff's Exhibit 1-A for identification.

MR. KENNEDY: Objection, your Honor, no proper foundation. There is no basis for any of the assumptions that Mr. Friedman has used in at least four answers.

MR. BRADY: The same objection.

THE COURT: Well, I would like to know what the assumptions are.

MR. KENNEDY: As I understand Mr. Friedman's testimony, at least insofar as the Spanish-speaking people are concerned, he had to arrive at two separate assumptions in multiplying figures. There has been no indication by testimony or otherwise why he chose those particular figures. In other words, did he just feel that in his mind that was a fair figure to multiply by, and he came up with an answer. There has been no explanation as to the basis for that assumption. It is a very integral part of his calculations.

THE COURT: Very well, why don't you ask him. This question really goes to the weight, not to the admissibility.

MR. DEVORKIN: May I be heard a moment?

THE COURT: Yes.

MR. DEVORKIN: I am trying to bring out, and I think I have, each of the assumptions Mr. Friedman made in transposing one set of figures into another set of figures. As he said, the Census Bureau does not publish statistics for each and every variable that we might be interested in.

Therefore, we are trying to make approximations. The calculations he made and the tables he prepared stand there and speak for themselves and are subject to argument by counsel as to their legal --

THE COURT: That goes to weight, not admissibility.

MR. DEVORKIN: That is correct. If counsel are going to offer an alternative set of hypotheses we can argue in post-trial submissions and all the data was taken from documents published by the Government and he performed some rudimentary calculations.

THE COURT: The objection is overruled and the document is received.

MR. CORCORAN: May I be heard, your Honor?

THE COURT: You have my ruling.

MR. CORCORAN: I understand, but this was an objection I sought to interpose before you made the ruling.

One of the factors used by the witness with respect to his calculations is referred to on Page 1 under Table B3 where he speaks of Spanish language black males in the labor force sixteen years and over.

I submit, your Honor, that by reason of the exhibit that the Government has already interposed, namely referable to the administrative code of the City of New York, it is there stated that applicants for this type of work involved in this investigation shall be at least 21 years of age. Hence, this is an improper factor. It makes the entire study and survey unscientific and I would also respectfully request the Court for an opportunity to hear this witness out and defer our cross-examination until we have had the time to study those factors and assumptions further.

I don't this service should be taken by the Court until we have had the time to adequately investigate these assumptions and factors.

THE COURT: You are always at liberty to do that and you have my ruling.

[Plaintiffs' Exhibit 1A for identification

received in evidence.]

Q I omitted one thing, Mr. Friedman. There are some tables at the end of Plaintiffs' Exhibit 1A, I believe three pages there.

A Yes.

Q What are they?

A Essentially a summary of what the tables concern and my assumptions and how I arrived at my calculations.

Q And are part of the exhibit?

A Yes.

MR. DEVORKIN: I have nothing further, your Honor.

THE COURT: Any cross-examination? You are all at liberty to present your own figures and --

MR. CORCORAN: We understand that but we would rather have --

THE COURT: It is not what you would rather have.

MR. CORCORAN: So your Honor can be informed intelligently, we would like to have the opportunity of seeing these figures as we get the day-by-day report which we assume we will have tonight or tomorrow morning, and have an opportunity to examine this witness on the basis of his testimony because we were unable to follow him thoroughly, so we can investigate.

THE COURT: You will have the testimony tomorrow

and you got the documents on which he based his testimony. I am sure the witness can be recalled if you want to cross-examine him.

However, I don't see what more you can get than he has already indicated and how he went about this and on what basis he reached these figures. If there are faults I don't think that the cross-examining him is going to add or subtract.

MR. CORCORAN: I think so, I respectfully disagree. We would like to have the worksheets which the witness used.

MR. DEVORKIN: May I be heard just a moment?

THE COURT: Yes.

MR. DEVORKIN: Counsel for the defendants had all the tables of the Bureau of Census that I intended to use since ten days ago and I told them that I intended to use them.

Furthermore, they had the proposed stipulation by me to the effect of Mr. Friedman's testimony in the alternative. One, either the figures of what he calculated them to be, a summary at least or in the alternative I proposed to stipulate Mr. Friedman or the Government had calculated the following tables with the following explanation which is exactly what Mr. Friedman offered

into evidence.

The only exception is he had not prepared Table 82 but they had the underlying documents for that.

Mr. Friedman is an out of town witness.

THE COURT: If nobody wants to cross-examine him, he is excused.

MR. KENNEDY: May I, your Honor?

THE COURT: Yes.

4.2am

CROSS-EXAMINATION

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BY MR. KENNEDY:

Q Mr. Friedman, I refer you to Table B2 on Page 6. You reached a conclusion that 16.94% of the total working population is black; is that correct?

A Yes.

Q That is between what ages, sir?

A That is 25 and over.

Q 25 and over?

A Let me check. I did not have the age listed.

According to Table 126 that is sixteen years old and over.

Q Now, what percentage are males between sixteen and 21, if you know, sir?

A I do not.

Q Do you know whether or not the figures you

utilized as a basis included full-time and part-time work?

A I am not certain.

Q In other words, you cannot tell me with certainty whether or not a sixteen year old boy working three hours a week was included in this particular survey, is that correct?

A I used the Department of Census calculation.

Q You are unable to tell me the basis for the Department of Census figures?

MR. DEVORKIN: Those documents and the Bureau of Census figures do say it. They define the civilian labor force employed and unemployed, every person available and seeking work.

MR. KENNEDY: I am only asking the witness. He had the benefit of working with these figures.

THE COURT: You want to save having to look at those documents and I am letting you ask him.

MR. KENNEDY: Thank you.

THE COURT: But I am not saying these facts are not available to you in other data.

MR. KENNEDY: Thank you, your Honor.

BY MR. KENNEDY:

Q Mr. Friedman, did you have to make any assumptions

at all with respect to these figures on Table B2?

A Yes, sir. I assumed that the percentage of black males were high school education or less and was the same as in the black male labor force as it was in the total black population.

Q What was that assumption based on, sir?

A On available data.

Q What available data, sir?

A For the actual -- let me correct myself -- the lack of any data to the contrary.

Q So you simply took what you felt was a fair figure, is that correct?

A I took the only figure I have so, yes.

Q And where did you get that figure from?

A I got it from dividing the number of black males 25 and over and high school education or less by the total number of black males 25 or over.

Q Why did you not multiply? Why did you divide and not multiply?

MR. DEVORKIN: Objection as to form, your Honor.

MR. KENNEDY: I think I am entitled to ask him.

THE COURT: Go ahead.

MR. DEVORKIN: Multiply what by what?

Q Multiply the two figures.

A Because I was taking a percentage of black males with high school education or less and as a percentage of total black males 25 or over and the standard practice is to make that mathematical calculation by division.

Q I just want to make sure why you did one thing and not the other.

Now, Table B3, you are telling us that 12.67 of the total working population in the five boroughs is Spanish speaking, is that correct?

A Yes, sir.

Q Did this include figures of 16 years of age and over?

A Yes.

Q And are you able to tell us what percentage of Spanish speaking males between 16 and 21 years of age are in those calculations?

A No, sir.

THE COURT: Let me ask you this: This reference which you used this figure 25 plus, that means 25 years or older?

THE WITNESS: Yes, sir.

Q That I understand was taken from the table that you worked with, is that correct?

A Yes.

Q These figures?

A Yes, sir.

THE COURT: Which would include people 21 years or older?

MR. KENNEDY: That is correct, your Honor.

Q Now, what assumptions were made with respect to Spanish speaking people, Mr. Friedman?

A The assumptions I made here, I made two assumptions.

First, there was the assumption parallel to the assumption I made in Table 2B, that the percentage of Spanish language males with high school education or less in the total population were the percentage in the Spanish language male labor force.

The second assumption I made was because there was no data for Spanish language males, I substituted Puerto Rican as the available percentage.

Q Now, included in that particular calculation, would that include people who were 17 and 18 years of age?

A Which calculation?

Q Well, in arriving at the 12.67 figure.

A Yes.

MR. KENNEDY: I have no further questions, your

Honor.

BY MR. BRADY:

Q These figures are all concerned with the population in New York City, the five counties?

A Yes, sir.

MR. BRADY: Thank you.

BY MR. CORCORAN:

Q Mr. Friedman, when you referred to Spanish language males --

MR. DEVORKIN: Can we have either Mr. Brady or Mr. Corcoran ask the questions of the witness?

THE COURT: Who is going to be counsel? I think we better have that pretty clear now who is going to be counsel.

MR. BRADY: I am counsel.

THE COURT: Very well, let us abide by that. You are excused. Thank you very much .

[Witness excused.]

MR. DEVORKIN: For the Court's convenience and counsel, I will hand up a copy of the Circuit Court opinion in Rios against the Steam fitters and that makes reference to the standard data that Mr. Friedman used in his underlying calculations.

THE COURT: Do you want a short recess?

MR. DEVORKIN: I'm ready to proceed,your Honor.

THE COURT: All right.

MR. DEVORKIN: Thomas Maguire.

THE COURT: Junior, I take it?

MR. DEVORKIN: Yes.

THOMAS MAGUIRE, JR., called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Maguire, just for the record, what is your race?

A Excuse me?

Q What is your race?

A My race? Caucasian.

Q Are you employed?

A Yes.

Q In what capacity?

A As business representative.

Q For whom?

A Local 15, International Union of Operating Engineers.

Q Do you hold any other offices in the union?

A Yes. I am also recording corresponding secretary.

THE COURT: Which local?

THE WITNESS: Local 15.

Q Any other office?

A As a recording corresponding secretary I am a member of the Executive Board.

Q How long have you been business representative?

A Since approximately 1963.

Q How long have you been a member of the Executive Board?

A Since approximately 1969.

Q How old are you now?

A Excuse me?

Q How old are you now?

A 38.

Q A business representative is also called a business agent sometimes, is he not?

A Yes.

Q How did you get to be business agent for Local 15?

A I was appointed by the business manager as business representative for Local 15D.

Q The business manager is your father?

A That is correct.

Q When did you first get work in this industry as an operating engineer?

A Approximately 1955.

Q Do you remember what kind of work that was?

A I believe it was on maintenance work.

4.3 Q How did you first go about getting this work? What did you do?

A Well, I got some experience on my own when I graduated from high school in 1953, in the summers, 1953 and 1954.

Q How did you get that experience?

A On my own basically.

Q What did you do?

A I went around to jobs -- I lived in the Bronx at that time -- construction jobs and asked the operators on the job to give me an opportunity to break in on the job.

Q Did you know them before?

A Well, coming from a union family, I came in contact with many people who were members of the Operating Engineers.

Q So you would go to people you knew and ask them to let you try the machine?

A Some people I didn't know, some people I knew.

Q Did they know you?

A I would say very few at the time did.

Q Did you tell them what your name was?

A Yes, I did.

Q How did you get your first regular job as opposed to perhaps summer time jobs?

A I believe in 1957 I applied for membership --

Q I am not talking about applying for membership. How did you go about getting your first regular job as opposed to walking on the site trying to learn the equipment?

A I believe I approached one of the business agents of the operating engineers.

Q You approached one of the business agents? In the office or in the day room?

A I don't recall exactly whether it was the office or the day room, sir.

Q You didn't use the day room, though, did you?

A For what purpose?

Q At that time, to find that job.

A I don't recall the exact manner in which I obtained the first job.

Q Do you remember in your deposition on March 7,

1974, referring to Plaintiffs' Exhibit 18 for identification?

A Right.

Q Do you remember being asked this question and giving this answer:

"Question: That you would keep going back to the office of the union or the day room if you recall and probably the office and you may have called the business agent?

"Answer: Yes."

Does that refresh your recollection as to how you got it?

A Yes, it does.

Q That is how you got your first job?

A I believe so.

Q What kind of job was that again?

A As maintenance engineer.

Q It wasn't an operator?

A No.

Q Did you know very much about operating at that time?

A I was familiar with some pieces of equipment, pay loaders.

Q Back in 1955 and 1956?

A I believe so.

Q Did you continue to get summer type work during 1955 and 1956?

A Yes.

Q You were breaking in on various pieces of equipment?

A 1953 and 1954 I believe I was breaking in on my own and in 1955 I sought work through the Operating engineers.

Q Still in the summertime though?

A Yes, it was.

Q You were still trying to learn pieces of equipment, weren't you?

A Other pieces that I wasn't familiar with.

Q Which pieces did you know how to operate? Pretty much just dozers?

A I didn't say dozers.

Q You couldn't operate a dozer?

A I didn't say that, sir. Will you let me answer the question, please?

Q Yes.

A Thank you. I said that I was familiar with various pay loaders, 977 and 950.

Q What is a pay loader?

A A rubber-tired machine with a bucket on the front.

Q Called a front end loader sometimes?

A Called a front end loader, yes, sir.

Q 977 is just the manufacturer's number?

A 977 is the catalog.

Q Manufactured by Caterpillar?

A Yes.

Q Were you being paid union scale when you were breaking in on this equipment?

A When I was breaking in on my own?

Q When you went to the business agent.

A Yes.

Q For this job, were you being paid union scale?

A I wasn't breaking in.

Q At that time you were paid union scale?

A Yes, I was.

Q When you were working a couple of summers before that --

A Yes, I did.

Q Do you remember or know how much some of this machinery cost back in those days that you were operating?

A At that time did I know? No, sir.

Q Do you have any idea now what it cost?

A Well, of course now --

Q What it cost then, not now. Was this little dinky, cheap equipment you were operating or fairly sophisticated equipment?

A No equipment is little dinky equipment in construction. I didn't know -- I knew it was many thousands of dollars.

Q Some of them $100,000?

A Well, not the equipment that I was familiar with.

Q That was less expensive equipment?

A Different equipment I would say cost different prices.

Q A little less expensive than others in the field?

A What do you mean? I don't quite understand the question.

Q Was it simple equipment or complex?

A All equipment I would feel is complex to a degree. There is some more complex than others and I guess you could keep going up the scale.

Q How about the stuff that you operated, was it more or less complex?

A Than what?

Q Other equipment.

A What other equipment?

Q As I understand your testimony, sir, there is some equipment that is complex and some equipment that is not so complex.

A Yes, sir.

Q The equipment that you were operating in 1955 and 1956, was it more complex or less complex?

A Than other equipment?

Q Yes, sir.

A I suppose in some manner of speaking it could be more complex than other equipment and it also could be less complex than some equipment.

Q It was medium equipment that you were operating?

A Right.

Q And medium expense, not too expensive, right?

A It was expensive I would imagine.

Q Was that equipment hydraulic or cable equipment?

A I am trying to recall.

THE COURT: Talking about 1955?

MR. DEVORKIN: Yes, sir.

A [continuing] I am trying to recall, sir.

Q When did hydraulic equipment begin to become available in the field?

A Hydraulic equipment, I would say, I believe it was hydraulic equipment around that time, but I would say

the 1960's.

Q But this was hydraulic equipment back then?

A Yes, but it became more prevalent as time went on.

Q In the beginning did you learn on hydraulic equipment or the early days with the union did you learn hydraulic equipment?

A In my early days with the union? I would think so, sir.

Q You continued to get part-time summer work in the summers of 1955 and 1956, correct?

A Yes.

Q You were in school at the time, right?

A Right.

Q During this time your father was still business manager, wasn't he?

A I believe -- I know he was business representative. I don't recall whether he was business manager or not.

Q When you were getting those summer jobs while you were in school, did you still do this by calling the office or the business agent?

A Do you mean when I was seeking working through the Operating Engineers?

Q Yes.

A Basically you mean --

Q Yes.

MR. BRADY: I object to that, that is not Mr. Maguire's testimony that he only called the business agent to get a job.

MR. DEVORKIN: I am asking him the question, your Honor. Whether that is what he did. I think I am entitled to ask the witness as opposed to Mr. Brady testifying.

MR. BRADY: That was did you still continue to just call the business agent to get a job, was that your question?

THE COURT: Well, he got his first job through the business agent. The question is did he get his next job through him. He did testify that to the best of his recollection he got his initial job as far as the union was concerned through the business agent and not by going to the day room or whatever it is.

Now, I see no objection to him asking whether he got his second job the same way.

4.4am Q Did you get your next job that way?

A I don't recall whether I went down to the day room or called the business agent. I know there were times that I was going down to the day room.

THE COURT: Let us take a recess.

[Recess.]

MR. DEVORKIN: Before we go on, can I ask for a ruling from the Court with respect to counsel discussing testimony with the witness while he is on the stand during the recess? I think, your Honor, under the circumstances that makes it even more difficult with an adverse witness.

THE COURT: I can appreciate that. I will let it go that far at this time.

Q Mr. Maguire, when you got your next jobs in those two summers, did those next jobs come from the business agent also?

A Referring to the summers of --

Q 1955 and 1956.

A Talking about subsequent summers, are you?

Q 1955 and 1956.

A I didn't work the whole part of the summer.

MR. DEVORKIN: Could you read my question, please.

[Question read.]

Q Will you answer that question?

A Yes, sir.

Q They did come from the business agent?

A Yes, sir.

Q And the jobs that you got, did they last fairly regularly?

A No.

Q How long did they last?

A The job may have lasted four to six weeks.

Q Four to six weeks during the summer?

A Yes.

Q They weren't a day or so at a time, were they?

A Some jobs, some maybe a couple of days but I recall one that lasted about four weeks or so.

T5

Q But mostly they were fairly regular jobs; correct?

A Not consecutively. There was atime when I finished one job and I may not get another job for a while, and I just have to keep going back through the offices of the day room and take my chances.

Q You took your chances?

A Well,as far as work being available. If there was no work available for me it is obvious I couldn't.

Q You took your chances with the business agent, is that right?

A That is a figure of speech -- when I say I took my chances, can I rephrase it?

Q Of course.

A If you don't put the wrong connotation on it. I would like to say went down and if there was work available I may have put my name on the out-of-work list.

Q Well, sir, do you remember being asked this question, page 10, Plaintiff's Exhibit 18 for identification:

"Q What kind of work were you getting and how you would get assigned to the work?

"A There were two jobs and they were maintenance jobs. Basically I would call. Since I wasn't a member I didn't know the exact procedure. I would either call

the business agent or come down to the office. I eventually did go out the following summer. I worked part of the summer of '55 and '56.

"Q When you did get assigned out or referred out, the jobs turned out to be fairly regular, they lasted for some length of time at least during the summer?

"A Pretty much."

Do you remember that?

A Yes, sir.

Q Was that true?

MR. KENNEDY: Your Honor, I do not see how that is inconsistent with his testimony.

THE COURT: I don't, either. He is just refreshing his recollection by asking him if that is true. He did not seem to remember. Now he remembers.

Q How old were you at the time in 1955 and 1956?

A In 1955 I was approximately 19 --

Q And when did you become a member --

A -- or 20 -- 19 or 20.

Q When did you become a member of Local 15?

A July, 1957.

Q And how did you do that?

A Well, of course I spoke to my father, who was the business representative at the time,for advice, and

him being an independent man, he wasn't about to lead me by the hand. He told me to talk to one of the business agents and get advice from him and on his recommendation I would go before the executive board if he so recommended.

Q And you were admitted at that time?

A I was admitted at that time.

Q Were you ever a member of 15-A?

A No, sir.

Q When you were admitted to 15 what machines did you know how to operate?

A 977, 950, loaders.

Q Those are loaders?

A Right.

Q Once you became a member how did you go about obtaining work?

A Well, first I became a member in July of 1957. Of course you have to keep in mind, sir, that that is the best way I can answer this question, that I never intended to work full-time at this trade. I had, since I graduated from high school, decided that I wanted to be an official of a labor union, which was one of the reasons for my taking labor practices at Manhattan College, and in the fall of 1957, upon my graduation I did further pursue it -- I attended the Harvard Graduate School of Business in what

was then known as the TUP -- Trade Union Program -- to further my education in that field that I wanted to pursue, namely, a business representative of the Operating Engineers.

Q Well, we will get back to my question in a minute. As long as you brought that up, how did you find out about that program?

A The Trade Union Program?

Q Yes.

A Well, from my association, being related, of course, to a business representative from the Operating Engineers I heard it by word of mouth and conversations that there was such a program being initiated by the International Union of Operating Engineers, and I let it be known that I would -- that I was interested in such a program.

Q To whom did you let it be known?

A I let it be known to Mr. Joseph Delaney, who at that time, I believe, was General President or General Secretary-Treasurer, in conversation.

Q Of the International.

A Yes.

Q He knew who you were?

A Excuse me?

Q He knew who you were?

A Yes, because he was the former business representative of Local 15.

Q Now getting back to the question I asked you before, how did you get your jobs in this industry after you became a member of the union?

A That would be in the summer of 1957. I don't remember exactly. I may have gone down to the day room or --

Q Well, again reading from Plaintiff's Exhibit 18, page 16:

"Q How did you go about doing that? What would you do to obtain work?

"A I believe I may have called the business agent. I don't know exactly how I approached that."

Is that what you did -- you called the business agent?

A I say I may have, because at the time of that testimony I wasn't quite sure. I said, "I may have." I didn't say for sure that I did have.

Q Well, the question goes on:

"Q How would you get work?

"A Well, you could go on your own. You could go out to a contractor you might have worked for and ask if

he had an opportunity for you, if he had jobs open. Or you might call the union or go down to the day room if there was a day room.

"Q Was there a day room at that time?

"A I think there was a day room. There probably was."

A Yes.

Q Was there a day room?

A Yes.

Q You remember now that there was a day room?

A Yes, there was a day room.

Q Now you became abusiness representative in 1962; correct?

A Approximately '62 or '63 -- somewhere around there.

Q And between 1957-1958 and 1962 when you did become a business representative, and presumably you left the field, what work did you do?

A I left the field -- first of all, I went into the Army Engineers in 1958. I believe I was in the Army Engineers Reserves; went back to duty at Fort Leonard Wood, Missouri.

I know in the transcriptit says"Leavenworth" -- I wish they would have that corrected. There is a big

difference.

Q How long were you in the Engineers?

A I was in the Army Engineers for approximately six years.

Q Did you get training from the Engineers?

A Yes, at Fort Leonard Wood, Missouri.

Q Is that good training or bad training?

A Well, it's good as far as the Army is concerned, ut hunfortunately a lot of the equipment in the Army Engineers is obsolete, at least even at that time.

And they couldn't give you, I felt, adequate training. When they are training many thousands of men you don't get that much time up on the equipment. As I say, a lot of the equipment was obsolete, that when I come out I did not find on the construction job.

Q Did you learn more in the Army School than you learned in those two summers or less?

A No, I learned more in the summer.

Q When you were in the Reserves during the six years?

A I was on active duty for six months.

Q And then in the Reserves?

A I was in the Reserves both before and after active duty.

Q Aside from the time you were in the Army, before you went into the union office, how did you get work in this field?

A That would have been in the years prior to my going into the office in 1960 -- the Local 15 office. There were occasions when I went down to the day rooms, and there were occasions when I may have talked to the business agent.

Q What kind of work did you get?

A I wanted to get on equipment but I took whatever was available. There were well point jobs that were available. I believe I was on a well point job.

Q You were doing mostly maintenance work, weren't you?

A Yes, because that was all that was available. I wanted to get out on operating equipment, but you took what is available.

Q You mean for two years you never operated?

A I didn't work steady those two years.

Q But when you worked you did not really operate?

A Excuse me?

Q But when you worked you did not really operate?

A While I was working during those years when machines were lying idle during lunch hour, I would get up

on the machine but not per se as an operator.

Q You really weren't a very good operator, were you?

A I thought I was a pretty good operator.

Q They didn't let you work machines?

A If there were machines available -- I am sure I would have gotten one; we had some unemployment then; you may not have that much construction work. If there wasn't an operator's job available, I wasn't one sitting around biding my time. I wanted to work. As I say, that wasn't going to be my trade, to work outside -- it was all a means to an end, which was to become an official of the Operating Engineers.

Q When were you successful in becoming an official of the Operating Engineers?

A I went into the office in 1960, working in the office under the office manager and in -- I believe in 1962 or '63 Local 15 was undertaking an organizing program for the survey engineers -- organized the survey engineers, and we had a charter, 15-D for organizing the surveying engineers and was asked by the business manager to undertake the job of business representative or business agent of Local 15-D, mainly to organize because that was an instant branch of Local 15.

Q And your father was business manager at that time?

A Yes, sir.

Q And when were you appointed business manager or business representative of 15?

A In 1970.

Q So you were about seven years as business rep of 15-D, is that right?

A Approximately.

Q And between '62 and '69 or '63 and '70 your principal job was to organize surveyors?

A My principal job was to organize the unorganized in the surveying field, to seek agreement with the various land surveyors and building and heavy construction associations, and also at the same time to service those members who we had initiated into 15-D.

Q Did those contractors come to you to ask you get their men in the union or did you go to them?

A No, the contractors wouldn't ask me. I went out in the field and approached men working for either surveyors or contractors in the field, and land and concrete, and asked them if they were interested in joining 15-D, telling them what the advantages were to have a union stand behind them.

Q The contractors did not come up to you and say,

"How about signing up our men for the union," did they?

A No, they did not.

Q Did you ever hear that happen in your union field?

A It would make it a lot easier, sir, but unfortunately they are on the opposite side of the fence -- the same as I wouldn't do their work they are not about to do my work.

Q Now how do surveyors get their work?

A How do surveyors get their work?

Q Yes, sir.

A They may get their work on their own, asking contractors,or if they seek to work for a surveyor they ask a surveyor -- an employer if there is employment there, or they may call Local 15-D, the business agent.

Q Well, do most surveyors have a full-time job or do they shift from one contractor to another?

A Surveyors work for who, sir?

Q In your industry.

A Surveyors working for either consultants or contractors, sir -- because there is a difference.

Q Take one at a time.

A Which one?

Q Either one.

THE COURT: Take the contractors.

THE WITNESS: The contractors?

THE COURT: Yes.

A You can't -- you can't give a given figure. Some fellows may work for as many as 50 contractors a year; others would work for one. It depends on the amount of work that the contractor has for that particular man in this category.

Q Would you say that a lot of the surveyors move around?

A I would say a good deal percentage of the men move around, yes.

3 Q There is no day room for 15-D men, is there?

A No, there is not.

Q So they call the office and sign themselves up on some kind of list or something like that.

A Yes.

Q What do you call that list?

A Out-of-work list.

Q And how do you maintain that list? A person who signs up first gets the job or is there some other method?

A Are you talking about --

Q Your out-of-work list.

A Are you talking about members or non-members?

Q Both. Take members both.

A All right. Members would call up or come down in person to see the business agent and say, "I am out of work. I am looking for a job."

In the course of that time, during the growing stages of Local 15-D you would have to take a man pretty much as you know what his category was, who he worked for, and so forth.

Q You mean you would accept what he said his qualifications were?

A Yes, and if he had a previous job you could check to see what category he was working in and what his record was with that particular contractor.

Q And what would the member do then?

A Then he would give his name and phone number, and tell us what he was qualified to do.

THE COURT: Do they work in such groups?

THE WITNESS: So the crews work what we call field parties. There is a party chief who is the lead man. There is a transit or instrument man who runs the various instruments, such as the transit, the theodolite level -- that is a precise measuring instrument; and then the rod man or the chain man.

THE COURT: So when they seek employment do they seek a job as a crew?

THE WITNESS: They seek a job as a party chief if they are qualified as a party chief, an instrument man if they are qualified as an instrument man, or a rod man if they are qualified as a rod man.

During unemployment, as we witnessed in different years, a party chief may say, "Well, look, I realize there are a lot of people out of work. I will take anything, whether it be an instrument man or a rod man."

In other words, a party chief is qualified to handle the party chief or rod man; an instrument man is qualified to handle a rod man or instrument.

THE COURT: What I am inquiring about, is, do they go out like a band, a trio in the field?

THE WITNESS: No, they don't. Of course they work together. They may work with different people on the job.

THE COURT: All right.

Q And then how do you proceed to use that out-of-work list?

A Well, if the contractor was good enough to call us -- like I say, that is not the only means of a man getting a job from the out-of-work list. A man can get a

job on his own, or if he knows a particular contractor, through hearsay or scuttlebutt, that there is a particular fellow who is a good party chief or a good instrument man or a chain man, the contractor may contact those individuals on his own, or the man, if he hears of an opening on his own, may contact the contractor on his own.

Q How do people hear of openings on their own?

A By word of mouth, from other members or contractors who they may have worked for before.

Q How does the union or how would the business representative use that out-of-work list?

A Well, he would use it in this regard: if the contractor called for a party chief on building work -- and that could be broken down, because you have party chiefs who work for general contractors and you have party chiefs who work for concrete contractors. It doesn't necessarily mean that the party chiefwho is effective, who has the ability to work as a party chief with a general contractor or a builder, would be able to perform the duties of a party chief for a concrete contractor. We know from our own experience over the years that there are some that can do both, but there are some party chiefs who, for the most part, stay with building contractors and who are lost

when they get up on the deck laying out a floor.

Q And the business agent has to know who is who.

A He has to make every attempt to know who is who to the degree so that he doesn't send the wrong man out.

Q What do they do -- send the first man out who is on the list, send him out to the job if he is qualified for the job?

A Well, if he is qualified. Like I say, there may be a party chief on this list in building who may not be qualified on concrete. He may never have worked up on a floor laying out a deck. We would look for a party chief on that list, the first party chief on that list who had the required concrete experience.

Q And you would depend on your knowledge of the man to know whether he had the experience?

A Well, it would depend on our knowledge. Like I say, in the beginning you had to take a man on his own, whether he is telling the truth or not, because it was still a growing Local 15-D in 1963.

Q Do you maintain records of who is qualified to do what kind of work?

A From memory. If we got no complaints on a man doing a specific job we would have -- for a particular contractor, we would have no hesitancy in sending that

man out to another contractor doing that work. Of course if we got a letter or the contractor called up and said, "There were problems with that man's work," we would be leery or we would be careful when we sent him out next time.

Q Well, 15-D has about 13 or 14 hundred members, doesn't it?

A Well, I guess that is approximately right.

Q The business agent doesn't know all the people, does he?

A No.

Q He probably knows less than half, doesn't he?

A I would think so.

Q So as to the ones he doesn't know, what does he do with them if they call for a job?

A Now we have a school --

Q Answer my question, Mr. Maguire. Whatdoes the business agent do when a man whom he does not know puts his name on the list?

A We may test him at our school.

Q You may test him at your school?

A Yes -- more than likely, we would test him.

Q So if you know less than half the members are you telling me you test half the members at your school or you have tested half the members at your school?

A I don't know. I am not a business agent of 15-D right now.

When that school started I went on the outside -- I left 15-D as business agent --

Q Let us take --

MR.KENNEDY: Let him finish, please.

THE COURT: Yes.

A (Continuing) I left 15-D as business agent in 1970.

Q Let us take 1969. How many members were there in Local 15-D then?

A I don't know exactly, sir.

Q Was it over 1000?

A I don't know, sir. I don't know if it was 1000. It may have been at least 800 anyway.

Q And would you have known any more than half of them?

A I believe I knew at least half of them.

Q You might know --

THE COURT: Are you talking about a particular job done by a particular group in this union? Isn't the question whether they were qualified to do the job?

MR. DEVORKIN: That is what I am trying to inquire about, your Honor.

THE COURT: The crew chief -- or whatever his name is --

MR. DEVORKIN: Party chief.

THE COURT: Party chief -- how many party chiefs did you have? It wouldn't be 1800?

THE WITNESS: Sir, it is hard to tell you exactly. He would be one-third of a crew. The party chief would be one-third of a crew.

THE COURT: So you would have about 500?

THE WITNESS: 500, your Honor?

THE COURT: Is that a particular job or is that a job that can be performed by any of the 1500?

THE WITNESS: No, that is a particular job. The party chief is the most qualified man in 15-D.

THE COURT: So you don't have 1500 party chiefs?

THE WITNESS: No, sir.

THE COURT: All right.

Q So would it be fair to say that in 1969 there were about 400 members of Local 15-D whom you did not know?

A Yes, it could be.

Q And would it also be fair to say that those persons also used your out-of-work list?

A Some of them did -- not all of them.

Q Not all of them did, but some of them.

A Yes, sir.

Q And if a man like that called and put hisname on your out-of-work list, you would put his name on?

A Yes, I would.

Q And if his name were the first name on the list and a job came up and you saw his name, would you send him out?

A If I knewthat he was qualified I would send him out, yes, sir.

Q But you said you did not know the man, is that correct?

A Well, by his previous record working for other contractors. If there was any doubt in my mind -- if I knew the man and his qualifications there would be no question at all. If I did not know the man personally I would check to see who his last employer was and what his duties were and how he performed his job. I have done that many, many times, sir.

Q You would call the man and ask him who his last employer was?

A No, when he called in I usually asked that man this information, who he last worked for and what job he performed.

Q Did you write that down?

A No, I did not, sir.

Q You just remembered it?

A Yes, sir.

Q How long was this out-of-work list?

A The out-of-work list varied with the economy of the country, sir. When the economy is good the out-of-work list is not too long.

Q What was the longest it got?

A In 15-D? Four or five pages maybe, sir.

Q How many names on a page?

A Approximately 25.

Q So the list might have as many as 125 names?

A Yes.

Q And you would remember each of those people even if you did not know them before?

A I didn't say I would remember. If I did not remember, sir, I would check to see who they last worked for, and to find out what job they performed and how well they performed.

Q Well, if I called in on a Monday and you put my name on the list, and the job did not come up for four weeks after that,and you saw my name on the list and you hadn't known me when you put my name on the list, you would remember what I told you as to my prior employment experience,

would you remember it four weeks later?

A I may, sir.

Q You may.

A Yes.

Q And if you did not?

A If I did not remember? I would check to see who the man last worked for, and if he was qualified in that work I would send him out.

Q By calling the man back and asking him?

A I may have called the man up or called his previous employer.

Q What did you do with respect to non-union men in 1963 to 1969 as regards sending them out for work?

A We sent non-members out as well as members.

Q And they also signed up on this list if they sought help from you?

A Yes, sir.

Q And in those cases you had to remember what the man told you on the telephone as to his qualifications, is that correct?

A I wrote down that the man was qualified as an instrument man with a surveyor -- that would be put down. It wouldn't be a long, drawn-out thing.

Q In 1969 most surveyors who were out of work

called the union for help, didn't they?

MR. BRADY: Objection, your Honor.

A That is a leading question.

MR. BRADY: There is a question -- he can ask a question.

(Question read.)

THE COURT: I will sustain the objection.

MR. DEVORKIN: I haven't made the formal request, but I will. Can I examine the witness as a hostile witness under Rule 43(c)?

THE COURT: Motion granted. I do not think that type of question is necessary.

BY MR. DEVORKIN:

Q Mr. Maguire, did surveyors who were out of work in 1969 primarily call the union for help?

A Some did, yes.

Q Did they primarily do it or not?

A I don't recall, sir.

Q Reading now from Plaintiff's Exhibit 18 for identification, at page 34 of your deposition, do you recall being asked this question:

"Q As we approach 1969 would it be fair to say the instances of individuals coming to the union to get help to find jobs would be increasing? It wouldn't be in-

frequently any more; it would more closely resemble what would happen with respect to 15, 15-A?

"Mr. Brady: He says all men who would be out of work would tend to call in.

"A As we increased the membership? I would say it would have been proportionate."

Do you remember that question and answer?

A Yes.

Q And was it true when you said it?

A Yes, sir.

Q The contractors frequently call in to the union looking for surveyors, do they not?

A Contractors frequently call in.

Q In fact, the union prefers that they call the union for the help, does it not?

A Well, if you have members out of work I would prefer -- it is not mandated. I don't mandate it. I can't.

Q But you would prefer it.

A Sure, if I have people available I would prefer that they call.

Q Did you ever tell contractors you preferred them to call the union when they need help?

A I don't know whether I told contractors or not whether I preferred it. I would advise contractors that

I had people available for employment.

Q Do 15-D men desire, if you know,to switch to 15-A on occasion?

A I don't recall 15-D men desiring or showing a desire to transfer to 15-A.

Q How about to 15?

A No, I don't, sir.

Q Would you say that would be a rare occurrence?

A Yes, it would be, sir.

Q Now you do remember there being a day room for 15 and 15-A back in 1958-1959-1960?

A Vaguely, sir, yes.

Q Well, as best you remember it how did that day room operate in '58-'59 and '60?

A '58-'59-'60?

Q Yes.

A The members could, if they wished, come down to the day room to put their name on an out-of-work list.

Q Contractors would call the union when they needed help?

A If they so desired, sir.

Q Well, would they do it?

A If they had occasion, yes, sir.

Q They did it in '58-'59-'60?

A Yes, sir.

Q And the members came in -- what day of the week would they come in -- all days?

A They may come in any day during the week.

Q Are they supposed to come in on any particular day?

A Usually on Monday, we took a new list on each Monday.

Q So you destroyed the old list and made up a new list.

A Well, when you are talking about 1958, 1959 and 1960, I wasn't a business agent at the time. I couldn't answer that question.

Q What did you observe when you were in the day room, if you were?

A What did I observe?

Q Were you ever in the day room?

A Yes, I believe I may have been, yes, sir.

Q On Monday mornings?

A I don't recall if it was Monday.

Q What did you do there the first day the list was out, do you recall?

A I don't recall that, sir.

Q Did you see members sign up on any list in those

days?

A I may have come in after the list was taken. I don't recall, sir.

Q Do you know if men were sent out in the order they signed up or in the order in which they were out of work or the length of time they were out of work?

A I wouldn't have observed that, sir. It would have been -- there would be no reason why I would observe that, sir, at that time.

Q Well, how did you know you were being sent out for work in those days?

A When work was available, sir.

Q In relation to the other men who were also looking for work.

A Yes, sir. I felt that I would wait my turn.

Q What was your turn?

MR. BRADY: Objection, your Honor.

A When work was made available.

Q When did you expect that you would get work as opposed to the man sitting next to you?

THE COURT: Well, you have to define the man sitting next to him.

Q You sat in that day room, did you not?

A Not all the time, sir.

Q You did sit there some time?

A Yes, sir.

Q The other times you got called at home for work, isn't that correct?

A Not necessarily so.

Q Well, when you weren't sitting in there how would you get work?

A Sometimes I would call if I wasn't sitting there. I may have called the business agent or he may have called me.

Q But you did sit there some time?

A Yes, sir.

Q And when you say there you weren't the only one in the room, were you?

A Sometimes I may have put my name on the list and maybe sat around for an hour and then walked out. I didn't stay there habitually every morning every hour that the day room was convening.

Q What did you do when you walked out? Where did you go?

MR. BRADY: Objection, your Honor.

THE COURT: What is the relevance?

MR. DEVORKIN: I want to know if he went out to look for a job or what.

A I may have, sir. I may have gone out looking for a job, and then again I may have gone home or taking care of some business that was important to me at the time.

Q You may have done all of those things.

A I may have done not all of them -- any of them, sir.

Q Did any business agent at the time tell you when you were supposed to be sent out? In other words, did he tell you, "You will go out after the fellows here before you go out"?

A Yes. That was impressed upon me that there were people sitting around. I may not go out right away as soon as I came down to the day room. I understood that was one of the reasons why there was a long time -- I would stick around -- I knew there were a lot ofpeople out of work and I knew I wasn't the only one that was seeking work.

Q And were you told that if people came in to the room after you came in that you would be sent out first?

A I wasn't told that per se by the business agent at all.

Q Well, in any words similar to that were you told that?

A No, sir.

Q Did you believe that to be the case?

MR. BRADY: Your Honor, I am going to object to that. Is he talking about men with similar qualifications or what is he talking about?

THE COURT: I understood him to claim that there was discrimination.

If you do not identify who he preceded or who got a job ahead of him, I don't know how relevant it is; but I will take it. I hope we are pointing at something. I do not see what the target is yet.

MR. DEVORKIN: Your Honor, I am just trying to pin down what the procedures were in the hall at each step of the way, the general procedures irrespective of race, really.

THE COURT: Then it doesn't make any difference. Ask him what he knows about the procedures.

BY MR. DEVORKIN:

Q Does the day room work the same way today, Mr. Maguire, as it worked in 1958, 1959 and 1960?

MR. BRADY: Your Honor, he has testified before that he wasn't a business agent in 1958, 1959 and 1960. He did not knowprecisely how it operated at that time.

THE COURT: Well, is that the way that rates today?

MR. DEVORKIN: No, it isn't.

THE COURT: Say back in 1970?

MR. DEVORKIN: One element of the government's case, your Honor, is that the present practice is preserved to protect conditions created by past practices before the Civil Rights Act was passed.

THE COURT: All right, but only ask him what he knows, not what he thinks, not what his impression is -- what he observed.

BY MR. DEVORKIN:

Q You were in the day room in 1958, 1959 and 1960, were you not, and you used the day room?

A On some occasions, yes.

Q Now to the best of your knowledge does the day room work today the way it worked then?

A To the best of my knowledge, sir.

Q And you do know how the day room works today, do you not?

A I know how the day room works today.

Q How does it work today?

A The business agents come in to the day room for the purpose of handling grievances, phone calls from members on questions, on problems they may have, grievances, or accepting calls from contractors.

We use the telephone to make calls, to try to

resolve problems, to get information pertaining to different jobs, and people -- members or non-members come into the hall, if they desire to get their name on an out-of-work list, come into the day room to get their name on an out-of-work list.

Q And how does the out-of-work list work today?

A A man comes into the hall, puts his name on the out-of-work list, gives his phone number.

THE COURT: Is his name put on this list in the order of time?

THE WITNESS: As they come into the hall, your Honor, we put them on the list.

Q That is what happens, Mr. Maguire?

THE COURT: You just asked him.

Q Are you sure that is what happened, Mr. Maguire?

A As the men come into the hall and they request to get on the list, they get on the list in that order.

Q Isn't it a fact, sir, that men come into the hall on Monday morning and sit in the hall until the business representatives are ready to come out of the office and then when they come out of the office, there is a mad scramble to get up in front of the business representative and put their name on a list? Isn't that what happens?

A Do you mean toward the end of the morning? Every morning the business agents come out of our offices or whoever is taking the list and asks anybody, want to get on the work list, and they then form a line and get on the list.

Q You could be sitting there for three hours and be at the end of the line?

A Not three hours. I have never seen an out of work list take three hours.

THE COURT: Does the business agent select the order in which they get in line?

THE WITNESS: No, it just says get on line

and they get in line.

Q And the first man in the hall is the first man on line?

A I don't know. I don't watch and see who comes in and clock them in and see what time he gets in because we are working in the office, sir, handling business, taking phone calls, making phone calls in the day rooms there and that takes up a good part of our time.

Q When a man walks in the hall the first thing he does is not put his name on a list, is that correct?

A If he comes in on a day other than Monday that might be one of the first things he does, sir.

Q But on Monday?

A Monday, we take the list in the morning.

Q And so the answer to my question is what?

A What is your question again?

Q The man does not put his name on the list the first thing he comes into that hall on Monday?

MR. BRADY: I object, that was asked and answered.

THE COURT: We will take our lunch and start again at two o'clock.

[Luncheon recess taken until 2:00 p.m.]

1 p.m.

AFTERNOON SESSION

[2:00 p.m.]

THOMAS MAGUIRE, JR., resumed.

***

DIRECT EXAMINATION

BY MR. DEVORKIN: [continued]

Q Mr. Maguire, when a man puts his name on the out of work list, what information does the business agent take from him at that time?

A What he does, his name, phone number.

Q Is that all?

A If I was the business agent I would ask him where he worked last and if the job is completed to ascertain for my own purposes how much was left, duration-wise, for the entire job, construction project.

Q You don't write that down on the work list?

A No, I don't.

Q The men sign up again each Monday morning?

A Yes.

Q Does the length of time a man is out of work make any difference as to when he is signed out, assuming he is qualified?

A No. We try to go off the list as well as possible.

Q Do you maintain these lists permanently or do you discard them as the week is over?

A I may keep the lists for -- I can't talk for all business agents so I will have to answer this for myself -- I may keep a list for a few weeks, three weeks or so.

Q As far as you know, the union doesn't keep the lists any longer than that?

A I don't know what the other business agents do.

Q Does each business agent take a turn running the day room?

A When you say running the day room, sir, in what respect?

Q All I mean by that is signing people up on the out of work list. Do you do it one week and another fellow the next?

A I normally don't do it except I may, if there is a phone call for the business agent taking the list and he has to go and answer the phone, I will take over until he gets back. I normally don't take the list.

Q Normally which business agent takes the list?

A Frank Guma and John Murphy. I would say John Murphy.

Q Dan Murphy?

A Dan Murphy has taken the list if either John or Frank weren't there.

I take the list if the other business agents were pre-occupied on the phone, I may. But I don't as a practice take the list on Monday.

Q Can you tell us who the business agents are for 15 and 15A?

A Yes. Myself, Frank Guma, John Murphy and Dan Murphy.

Q John Murphy is also a vice president of the union?

A That is correct.

Q Do non-union men use the day room also?

A Yes.

Q In the same way you described for union men?

A Yes, sir.

Q Does the union ask a man to join the union after he has been at work for some period of time?

A We may after seven days. We have the right to ask a man to join the union.

Q Do you usually do that?

A Usually, yes, if he is qualified if we have the -- the exception would be if we have a great amount of unemployment, which we do at the present, we might not take him in right after seven days.

Q In those situations how long would you wait?

A It would depend. I don't there is any fixed time.

Q Has it usually been a couple of months?

A It could be a couple of months.

Q Is it ever longer than that?

A There have been times where it is longer. I should point out in regard to this we may send non-members out and lose track of them at some point.

They will be working on A job and may move to B job and onto C job for the same contractor and at times I have lost non-members I have sent out.

Q Are people working that you send out supposed to call back to the room to tell you where they are working?

A People that I have sent out, sir?

Q Yes.

Q Well, if I sent him out I would know where they are working. Maybe I missed something in your question.

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Q You are commenting that some men may change jobs and you would lose track?

A Oh, yes. We prefer that they call in so that we know where they are working to be sure we are better able to service them and better able to protect their interests in the local, but sometimes the man neglects to call and it is quite possible to lose track of where he is.

Q Normally you ask a man, then, to join the union after seven days of employment?

A Normally -- again it would depend on the unemployment at the time. After seven days, if the man is qualified there are instances where we -- many instances where we ask them to join the union.

Q Is it a standard practice of the union to ask the man to join the union after seven days?

A At some point after seven days, yes.

Q Well, which point after seven days would be standard practice?

A It is hard for me to pinpoint it because it would depend on the unemployment practice at the time -- not the "unemployment practice," but the unemployment situation at the time, and we do nothing to preclude a member. I would say usually a few months after he is working there, but again I have to say depending on the unemployment

situation. Right now we are probably in the worst unemployment in quite a number of years.

THE COURT: You can always ask him to join the union?

THE WITNESS: Yes.

THE COURT: You are talking about going out and asking him to join?

THE WITNESS: Right.

THE COURT: Assuming he is qualified?

THE WITNESS: Yes, after he is there seven days he can ask.

Q Do men ask frequently?

A There are times when men ask.

Q Well, what happens when they ask?

A Well, we would determine that they are qualified -- try to determine that they are qualified, and if the unemployment situation isn't too bad, we would,if they are qualified, recommend them for membership.

Q Do employers call you and tell you they have a man that they have hired and he has been on a job a certain number of days, "Do you want him in the union?" Has that ever happened?

A Not with me personally, to my recollection, sir.

Q Is it the practice of the union to request

employers to notify them when they have non-union men working so that they may be asked to join the union?

A I have never asked contractors to let me know when they have non-union men working for them.

Q You have a non-union clause in your contract, do you not?

A Yes.

Q Do you use that clause?

A Yes, we do.

Q How do you use that clause?

A After seven days if the man is on the job and we find him working for a particular contractor and we see that the man is capable we will approach the man and tell him we would like him to -- rather, we would request that he join the local union.

Q I am going to read to you, Mr. Maguire, some questions and answers and ask you if you agree with them. I am reading from Plaintiff's Exhibit 18, page 41 --

THE COURT: Is that Mr. Maguire's testimony?

MR. DEVORKIN: That is Mr. Maguire's deposition on the 7th of March.

Q Your deposition was taken, was it not, Mr. Maguire?

A Yes, it was.

THE COURT: This is his deposition.

MR. DEVORKIN: I will offer this as an admission at any event, your Honor, the page numbers, if you prefer it that way.

THE COURT: Go ahead.

Q "Q After a man gets referred out to the employer, if he is not a union member, does there come a time when he has to join the union?

"A After seven days if the union requested him to join, he would have to join.

"Q It's not 30 days?

"A Seven days.

"Q What is the practice of the union with respect to asking workers to join the union after they have been on the job?

"A The practice may be to approach them on the job or call them on the phone and request that he join Local 15.

"Q Is that the standard practice, invariably a man would be asked to join the union?

"A No, a lot of times the man requests it himself.

"Q If he didn't request it, would the union request it?

"A We might request it after a certain period of

time.

"Q When would you not request it?

"A We wouldn't arbitrarily not request it. But if there were a lot of unemployment I may not request him exactly after seven days."

THE COURT: That is what he testified to.

MR. DEVORKIN: I did not want to pull out a little part out of context.

THE COURT: He testified to that.

Q On page 44:

"Q Assuming a man is otherwise qualified, has been on the job, has the money to join the union and requests to join the union, in terms of the union's standard practice while you have been business agent, what would be the longest period of time he would have to wait to join the union?

"Maybe a couple of months. That's a hard question to answer."

Is that a fair statement?

THE COURT: Which statement did he make?

A Yes.

Q A couple of months would be the longest that a man would have to wait?

A I said "Maybe," because, if I may, sir, I tried

to qualify that by saying, depending on the unemployment situation. There are sometimes when a man that we send out we lose track of him and he may be working for a year or two years, and we lose track of him.

Q Have you ever had a member of the union call the union to complain that a non-member was working on a job for four months and why wasn't he asked to join the union?

A There may have been an instance. It is not too frequently that a member would call in, to my knowledge, that a man was working four months, but there may have been an instance where he may have called.

Q And if there was such an instance what would the union do?

A We would tell the member that he is to continue working, that particular man is to continue working.

Q One of the purposes of the union is to keep your members employed, is it not?

A Yes, sir.

Q And so occasionally you don't let people into the union if in your opinion members of the union are unemployed?

MR. BRADY: Objection.

MR. KENNEDY: Objection. That is purely specula-

tive on every one of these questions. I don't mind giving him some leeway on some of these things, but all of these are highly hypothetical situations and not actual situations.

THE COURT: Well, I don't know. He may have a recollection. If he does, he hasn't made much headway so far as I am concerned on that. It is purely hypothetical.

Q There are times, are there not, Mr. Maguire, when there is a lot of unemployment; correct?

A Yes.

Q And when there is such unemployment is it the practice of the union to not let non-members in for a while until there is less unemployment?

MR. BRADY: Excuse me, you mean in membership? You are not talking about the day room, are you -- in membership in the union?

MR. DEVORKIN: Will you please answer my question?

(Question read.)

A There are situations where we have great unemployment, where we may not take in every non-member that is working, if that is what you mean. We don't close the books,if that iswhat you are inferring.

Q And that is true even if the non-union man is working for an employer for a long period of time.

A I am sorry, sir, I lost my train of thought.

(Question read.)

A Because we don't take that particular individual in after seven days doesn't mean he is not going to get in 15.

Q Have you ever heard of a challenge to a non-union man?

A Challenge by who, sir?

Q By a union man on the job, have you ever heard of anything called a challenge?

A Yes.

Q What is a challenge?

A Well, a union man may approach -- a union member may approach another member to see if he is a member of Local 15. They do this on their own.

Q On the job you mean?

A On the job.

Q What happens when the union man approaches the non-union man?

A He may show him his card and say I am a member and ask him for his.

Q If the man approached has no union card, what happens?

A Well, the member may call the business agent.

Q What happens when people come into the hall who are not members and have little experience in the trade and asks to get work? What, if anything, does the union do ?

A What do you mean by little experience?

Q Not an operator, can't operate.

A Any skills?

Q No, sir.

A If he has no skill we would refer him out -- you say any individual?

Q Yes.

A Well, if he was minority we would refer him to the New York plan for training.

Q And if he wasn't minority?

A Well, if he requested to get on the list -- I am

not familiar with it, with the school -- if he requested to get on the list he would be free to get on the list, the training school list.

Q What if a man comes in and says I am an operator, I am not a member of your union and I would like to be referred out by the out of work list. What does the union do, if anything?

A We request that he be tested at our training school and if he is able to operate a sufficient number of pieces of equipment, he would then be given the opportunity of getting on the out of work list, or obtaining work any way he desires.

Q How many pieces of equipment should he be able to operate?

A Well, it is to the individual's benefit that he operate more than one piece of equipment because if he is limited to that one piece of equipment, there will be that much less opportunity for him to be employed, particularly when there is hard times and great unemployment.

So we usually suggest that you run three pieces of equipment at the school.

Q If he runs three pieces then he can be referred out as a qualified operator?

A Yes.

Q Before the school was in existence, what did you do when a new man came in and said he was an operator and would like to be sent out by the union?

A I have only been on the road since 1970 and can't go beyond that as business agent in 15.

If this is before the school the business agent then -- before the school, I would suggest he try to get some experience on his own as many of our members have done over the years.

Q You wouldn't refer him out from the day room then?

A You said he was qualified?

Q Yes, sir.

A We might have referred him to the contractor, because the contractor has the last word in hiring and firing and determine the qualifications of the man.

Q You would send him out and if he worked out with the employer, then he would be referred out again, right?

A Yes, sir.

Q Before the school was in existence, how did people get training for Local 15 equipment as you understand it?

A As I understand it?

Q Yes.

A I would think on their own, sir.

Q What do you mean by on their own?

A If he knew of an acquaintance who was an operator, they might approach a total stranger, like I know instances of that, and has to be broken in on equipment.

Q How about in the Army?

A How about in the Army what?

Q Don't they get training in the Army?

A They could get training in the Army, but I think I stated before that training in the Army, from my own experience and from what I can gather of the Army Engineers, I don't think it is adequate training for a man to come out of the Army Engineers or the equipment school of the Army and then go and be qualified.

There are some instances, maybe exceptions, but I don't think the man would be qualified to run modern-day equipment that we have now.

Q You base that --

A There are always improvements being made on them.

Q You base this conclusion upon your experience in the Army?

A From my Army experience and from some of the individuals who have come out of the Army and been tested

out at our school.

Q They don't work out?

A The majority don't make the grade, no, sir.

Q Is it possible that a man could start as a maintenance man or a helper and then get somebody to show him how to operate a piece of machinery on the job?

A The helpers would be in Local 15C, sir. I have nothing to do with that.

It is quite possible for a maintenance man working as a maintenance man on the job to want on his own, ask a friend or approach someone and ask him to let him use the machine when it wasn't being used, or ask the contractor to let him use the particular piece of equipment that might have been lying idle and not in use.

Q In the trade maintenance man and mechanic can be the same thing, correct?

A Pretty much, sir.

Q Do people come into the union and say, "I am not in your union but I am a mechanic and would like the union to refer me out as a maintenance man?"

A We would then try to, as we have been doing, ask one of the equipment shops to test him, put him through some paces, to see what kind of mechanic he is. Because the equipment they have in the shops is the same equipment

that you will see out on the construction jobs.

Q The operators aren't necessarily mechanics, are they?

A Not necessarily.

Q Do you have any relatives in the union now?

A Yes, I do.

Q Besides your father?

A Yes, I do.

Q Who are they?

A Listed by name?

Q Yes, sir.

A I have an uncle, William J. Corcoran, three cousins, William Corcoran, another William Corcoran in 15D and a Thomas Corcoran.

Q Anyone else?

A Any my brother-in-law.

Q Does Local 15 have jurisdiction over the oilers and firemen who assist on some Local 14 machinery?

A Yes, sir.

Q Are oilers supposed to be experienced before they are sent out for this kind of work?

A He should have some knowledge of the machine so that he can maintain it properly.

Q Oilers can't get the training to do that at your

school, can they?

A Not in our school, no, sir.

Q Where, from your knowledge, would he get this experience?

A Well, Local 15 is not an oiler's local, it is an operator's local, maintenance men and --

Q Does he get that experience as a helper in the shop, for instance?

A He may become familiar with the equipment in the shop. Of course, oilers -- you are referring to oilers on cranes -- and it would depend if it was an equipment shop that had cranes in the shop.

Q You said that Local 15 was not an oiler's union.

A No. We have an oiler's category, but this is mainly a union consisting of skilled operators, maintenance men, certified welders, firemen. Oilers are part of our jurisdiction.

Q The collective bargaining contract requires that all two-man cranes have an oiler assigned to them, is that correct?

A Yes, sir.

Q Do you know how many of your men --

A Not all cranes, tower cranes call for a maintenance engineer as the second man.

Q Perhaps I am confused. Which cranes call for two men to operate them, that is, one 14 man and one 15 man as you understand the contract?

A All cranes call for a 14 and a 15 man.

Q Do you know how many of your men work as the 15 man on a crane?

A As an oiler, sir?

3.2pm

Q As an oiler as against a maintenance engineer, as the 15 man on the crane.

A I don't know offhand, sir. I couldn't give you a fixed number.

Q Can you estimate what percentage of the men in your union would be doing that at any one time?

A I would say not a great number. The preponderance of the men are operators, certified welders, maintenance men.

Q I understand that. But would that be less than 100 men doing it at any one time, would you say?

A I don't know. It would depend on the work situation at the time; depending on how much construction was going on at a given time.

Q There has been some testimony it would be about 200. Is that a fair number?

A It could be. I know the codes of the City of

New York are making it more difficult to put cranes on the streets.

Q But you understand my question, do you not?

A I do, sir.

Q Is it fair to say that 200 is a good number for a number of your men that would be working cranes at any one time in the City?

A I don't know if we would have that many cranes working at this time with the great amount of unemployment, a great amount of lack of construction work going on in the City.

Q So 200 would probably be the maximum number then?

A It might well be, sir.

Q How would a Local 15 man become a 14 man, if you know?

A He might apply for a transfer.

Q How would he get himself qualified?

A Well, I guess he would have to learn how to run cranes and whatever equipment it calls for in order to get into 14.

Q How would he go about doing this, your man?

A He would approach somebody from 14 and find out what the prerequisites were for getting into Local 14.

Q Do you know how your men do that?

MR. KENNEDY: Mr. Devorkin, if you will, I have an objection, your Honor. He has not said whether or not he knows what the admission requirements for 14 are and the witness is saying, "I suppose, I suppose you would do this."

THE COURT: Do you know that?

THE WITNESS: I don't know the exact procedure for a 15 man being accepted into Local 14.

Q That is not my question, Mr. Maguire, maybe I misstated it.

My question is how does a Local 15 man learn the equipment as operated by the 14 men?

THE COURT: Learning how to operate the equipment?

MR. DEVORKIN: Yes.

A I suppose the 15 man would have to learn on his own. We couldn't be of any help there because we don't have the jurisdiction over the equipment of Local 14.

Q You have no knowledge of what your men do on job sites to learn to operate 14 equipment?

A They may ask the operators on the job to let them break in. That is strictly up to the operator or the contractor, if the contractor is willing.

Q Mr. Maguire, they may do a lot of things. Do you know whether they do or not?

MR. BRADY: That is exactly the type of question he is asking, how you might, how you may. That is the very question he is asking.

Q The fact is you could be an oiler, is that not correct?

A Get experienced? Yes, you could.

Q Are you familiar with the City's licensing requirements?

A I am not too familiar, sir.

Q Do you or do you not know that the City requires two prior years of appropriate experience for --

MR. BRADY: Objection.

Q Mr. Maguire, I hand you a copy of --

THE COURT: He says he doesn't deny knowing.

Q Reading from Plaintiffs' Exhibit 64 in evidence, Section 2365.23. Do you know whether or not an applicant for hoisting machinery operator's license shall have at least two years prior appropriate experience?

A I didn't know the exact number of years, sir. I know they had to have some years but I did not know the exact number of years.

T4

Q And the union and the members also know that, do they not?

A Do my members? Some of them may know. I don't know if all of them know.

Q Do you know if the contractors know that?

A Sir, I would imagine some of the contractors would know it. I have never discussed it with contractors. I couldn't say.

Q But a man needs experience before he can get that 14 license, is that correct?

A I believe he needs some prior experience.

Q And because he needs that experience, is it not true that it is the practice in the industry to have oilers take turns on this equipment?

A I don't know if that is a set practice, sir. I really don't.

Q You never heard anything about that?

A No, there is no such -- the question is referring to a set practice, I do not know that, sir.

Q Do you talk to your members about learning 14 equipment?

A There aren't too many members that approach me about Local 14 equipment, sir.

Q Do you talk to your members about what they do

on the job?

A Well, if I know members are on a particular job and I know what he is doing on the job, I visit these jobs from time to time, I know what the members are doing on any given job.

Q Do you ever see some of your fellows up on a piece of 14 equipment?

A There have been some occasions when I have seen them, yes.

Q Frequently or infrequently?

A From my own observation, infrequently.

Q And if a man came into the day room and said he wanted to learn 14 equipment, to learn how to operate 14 equipment, what if anything would your union do?

A A man not one of my members, I take it?

Q Yes, sir.

A Would come in to me, I would refer him to Local 14.

Q What if one of your members approached you about learning 14 equipment, what would you do?

A Again I would refer him to Local 14.

Q Are you familiar at all with the training school that Local 15 runs?

A Very, very little.

Q Do you know what, if anything, Local 14 does at that training site?

A No, I do not.

Q Do you regularly attend the meetings of your local union?

A Yes, I do, sir.

Q And have you ever heard of this case discussed at any of those regular meetings?

A A case of a man trying to get into Local 14?

Q This case. Have you ever heard anything about this lawsuit discussed at your regular membership meetings?

A Yes, there have been occasions when I heard this lawsuit discussed, yes.

Q Well, who said what, when, to whom?

Do you remember?

A I am trying to put it together, sir. It might have been -- we may have apprised the membership that there was a case going on at present. I believe we have from time to time.

Q Did you tell them to do anything or not do anything?

A I never did, sir.

Q Did you ever hear any business agent tell them to do something or not do something?

A I never did, sir.

Q Did you ever hear any business agent tell them to do something or not do something?

A No -- just enlighten them that there was a case presently going on.

Q Do Local 15-C men frequently or infrequently want to transfer to your branch of Local 15, if you know?

A Yes. There are some occasions when Local 15-C men request a transfer to 15.

Q Is that frequent or infrequent?

A On the whole I would say infrequent, sir.

Q When they do so are they seeking to transfer as operators or as maintenance men?

A For the most part as maintenance men, sir.

Q So that there are no rules -- excuse me, strike that.

Are there any rules in your branch about 15-C men being able to or not able to transfer to your branch?

A Are there any set rules? No. They must be qualified to do the work. I think that is a pre-requisite to do the work on the outside.

Q Now when a black person comes into the day room seeking work as a qualified operator from your union, what if anything happens?

A A qualified black operator, we would request a white for that matter -- request that he be tested out at our school.

Q You have never heard any remarks by officers of 14 when a black person came in the day room seeking work?

MR. BRADY: Your Honor, perhaps if Mr. Devorkin gave some indication of what type of remarks he is talking about the witness might better be able to answer.

MR. DEVORKIN: I am really interested if he has heard any remarks by 14 people when a black person seeks work.

THE COURT: All right, ask him that.

Q That is all I want to find out, if you heard any.

A If a 14 man entered the door he may have said, "Who do you wish to talk to?"

Q Have you heard anything else from a 14 officer?

A In this conversation with the black?

Q No, as conversation with you or your officers.

A No, I don't recall.

Q So you in 14 do not talk when a black person comes into the hall about what to do with that black person, do you?

A No, we treat him like anybody, whether he is white or black, or any nationality, as long as he is quali-

fied, we are going to afford him every opportunity.

Q And the Local 14 officers do not consistently refer the black non-members to your union?

A The only time they would refer them to us is if the particular person is seeking to gain employment on equipment or in a job under Local 15's jurisdiction.

Q Oh, I see. What if the man comes in and says he wants to work a roller; Local 14 and Local 15 work rollers, do they not?

A Yes.

Q Local 15 works a lighter roller and Local 14 works a heavier roller?

A Correct.

Q Who makes the choice as to which one he is to work for, if he says he has worked rollers before?

A Ask him what size roller, I guess -- what size roller he has operated.

Q What if he says "Any size"?

A Then either one of us could -- whoever he wanted to talk to -- if he wanted to talk to 15 he would. If he wanted to talk to 14 he would, or if he wanted to talk to both.

Q And Local 14 doesn't send him over to you?

A Only if the man requested to talk to Local 15

would he send them over to us,or if he -- (pausing).

Q If he want?

A If he suggested when he spoke to Local 14 that he wanted to talk to somebody in 15, or if he is interested in equipment that is under the jurisdiction of 15.

Q Do you tell the man which equipment he is under your local's jurisdiction or does Local 14 tell the man, if you know?

A If a man came in and said he wanted to be a crane operator, I couldn't discuss it with him too much. I would refer him to 14.

Q Let us say he wanted to be a backhoe operator. Both you and 14 have backhoes?

A I would ask him which backhoes, whether they were the big backhoes or the small hydraulic backhoes which 15 has jurisdiction over.

Q What if he said he operated most of the smaller ones and he would like to learn to operate the larger ones?

A Well, I would ask him which equipment he was interested in. If he was interested in the small equipment and he said he was qualified we would refer him out to our school to be tested.

If he said he was interested in big equipment, then that would be up to 14 to answer his questions about

the big backhoes -- that would be the two-man backhoes. That would be the jurisdiction of Local 14.

MR. DEVORKIN: I think I am finished. May I have the Court's indulgence for a moment?

(Mr. Devorkin examines.)

Q If a man says he wants to operate a crane, do you automatically send him to 14?

A I would refer him to somebody in 14 because I am not qualified to speak for Local 14.

Q And, if you know, is that the general policy of Local 15?

A I would think so, sir. That is my policy.

MR. DEVORKIN: I have nothing further, your Honor.

MR. BRADY: I have no cross-examination, your Honor.

MR. KENNEDY: I have none, your Honor.

THE COURT: You are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MR. DEVORKIN: Plaintiff calls Frank Guma.

FRANK L. GUMA, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Sir, how are you currently employed?

A I am a business representative for Local 15.

Q How long have you been a business representative?

A August of 1970.

Q Do you hold any other offices?

A I am an auditor to the local.

THE COURT: Is that of Local 15?

THE WITNESS: Yes, your Honor.

Q How long have you held the auditor's office?

A I believe that is eight years now.

Q How long have you been in the Operating Engineers trade in New York City?

A Since 1954.

Q How old were you then?

A 24 years old.

Q Did you join Local 15 in 1954?

A That's when I was initiated into the local, yes.

Q What was your first job as an operating engineer?

A The first job I had, I believe at the time it

was on a dozer, a D-6. It was on a housing job.

Q Did you do any oiling work on cranes in this fashion?

A At the time I think I was for about three weeks, but I requested to be sent out as an operator because I did not particularly care for that job.

Q You were sent out as an oiler first, right?

A Well, it wasn't the first job, I don't believe. I don't really recall, sir.

Q Your deposition was taken, was it not, Mr. Guma, on March 5, 1975?

A I believe so, yes.

Q And at the time do you remember being asked this question and giving this answer -- this is from Plaintiff's Exhibit 25 for identification on page 3:

"Q In 1954 were you an operator, Mr. Guma?

"A At that time the first job I went out on as an assistant on a crane, an oiler. But at the time I was breaking myself in to learn how to run equipment, when I thought I was ready I was sent out as a bulldozer operator."

A No, I remember that now, sir, but at that time that was the first job that I was given through the local. Previous to that, like I said, to learn I was going out on my own on different jobs when I got out of the Service.

I was discharged in 1953, and I made up my mind that I am going to get into this end of the business. So I want around to different contractors -- in fact, I was employed as a laborer, and whenever I had a spare amount of time, even the contractor would let me get up on a piece of equipment.

That is how I got my first introduction to heavy equipment. That's how it started.

Q Did you run any equipment in the Army?

A No.

Q And you were running other pieces of equipment after the union sent you out?

A Whenever it was possible, yes.

Q What were your first jobs with the union after this assistant to a crane operator's job?

A Like I said, I believe it was on a D-6, and then as other equipment came into the job I tried to get on that equipment to learn as much as I could.

Q Will you tell us and just tell us what a D-6 is?

A A D-6 is a smaller-type bulldozer.

Q When you joined Local 15 how long had you been working in the trade?

A Well, actually as far as working in the trade, I was working not at the trade but in association, in the

construction business -- I would say from 1953 when I got out of the Service to about 1954 when I come in.

Q How long was it from the time the day room or the union sent you out the first time until you joined the union?

A Will you repeat that, please?

(Question read.)

A Oh, I believe I was out on a job three weeks -- three to four weeks.

Q When you joined the union which pieces of equipment did you know how to operate?

A Well, by that time I became more or less proficient on that dozer, hydraulic backhoe, and I was on rubber tire payloaders, front-end loaders.

Q Did you know how to operate that before you came into the union?

A Well, I had been on them on these different jobs, but not sufficiently where I thought I was qualified.

Q You were essentially a dozer operator?

A The first machine I was on the housing job, right.

Q But when you came into the union you were essentially a dozer operator, is that right?

A Well, I wouldn't say "essentially" a dozer operator,

but let us say that was the machine I was on most of the time when I was out.

Q Now how exactly did it come about that you got into the union? What happened?

A Well, at that time as I recall, there was quite a bit of housing work going on in Brooklyn -- the Canarsie section, you know, and being that I originally came from there, I started travelling around these different jobs, employed as a laborer, and then the business agent for that area came around and would hit the job and I would -- and I think at the time I asked him, "Is there any chance for me to get into the business?"

Q What did he say?

A He said, "There is no objection as long as you get yourself working where you can be employed, that you are a qualified operator," you know.

Q Did he say he would give you a shot at it?

A Yes, he did, but he never stopped me from working even on those jobs.

Q He gave you that first job?

A No, he did not give me that first job -- I got that first job on my own, sir.

Q The crane job?

A No -- the crane job, yes, he did.

Q And then you went into the union shortly after that?

A Yes, I would say, as I recall, about three or four weeks.

Q Who would you go about asking to learn equipment on the job?

A Well, at that time, like I said, if I got a job or I was put on as a laborer and I saw a piece of equipment come in, because on these housing jobs sometimes pieces of equipment would come in for two or three days, put in the foundation and move on -- they did not stay there, so as much as I could I would get on that machine while there, like during lunch or maybe after quitting time, with the okay of the contractor, naturally, about the equipment.

Q Has there been a lot of highway work here within the last ten years?

A No, I wouldn't really say a lot in the last ten years.

Q How about tunnel work?

A Tunnel work, yes, quite a bit.

Q Is there a lot of tunnel work going on right now?

A There is tunnel work going on in New York -- Manhattan, Bronx, Queens, Staten Island.

Q Are they building a big tunnel around the whole

City?

A Well, that is part of the pollution project going on.

Q A lot of Local 15 men are working there?

A Quite a few.

Q And how about 14 men?

A There are 14 men working there, too.

Q What do your local men do in the tunnel?

A We perform the maintenance, welding, and on certain type of tunneling machines up to certain sizes our men operate the mucking machine.

Q What is a mucking machine?

A Well, that is the machine that actually bores the tunnel.

Q And you mean you operate that?

A Up to certain sizes, yes. Then you have larger size machines where Local 14 would have the jurisdiction of them.

Q Do you continue to do the work on 14 machines?

A We do the maintenance and the welding.

Q Do Local 14 men do any work on machines that Local 15 men operate?

A No, except operating a piece of equipment that they are involved in.

Q How does a man learn to operate a mucking machine?

A By being a tunnel worker -- being around tunnel work, that is one way I know.

Q Tell us how you would do it?

A Well, actually you could have been sent down as a maintenance man. You always have people in the business that want to better themselves, because in this business the more you know the better off you are, and just by watching and observing you could pick up quite a bit that way.

Q That is not the kind of machine men learn out at the union training school?

A No, we don't have that type of machine there.

Q So you have to learn that on the job.

Local 15 operates a formal training school.

A Yes, they do.

Q Do you have anything to do with that school?

A Yes, sir.

Q What?

A Well, I am one of the directors of it. The school is at Kennedy Airport.

Q How long have you had that school?

A Since 1970.

Q Does anybody else help you run the school?

A Yes, there is another director involved, Daniel Murphy.

Q And he is also a business agent?

A That is right.

Q What kind of equipment do you have out at the school?

A We have hydraulic backhoes, caterpillar dozers -- those that we call cats; rubber tire dozers, 977's, 966's -- these are cat loaders -- in other words, on caterpillars. Then we have the rubber tire front-end loaders.

Q So if I get that right --

A Excuse me, and wehave a cherrypicker out there, too.

Q You have dozers of different kinds?

A Yes, sir.

Q Backhoes of different kinds?

A That is correct.

Q Front-end loaders of different kinds and a cherry-picker?

A Right.

Q And you operate the training school for all of those pieces of machinery.

A Yes, sir.

Q What level must a man attain in order to graduate

from your school?

A Well, we have -- well, when you say "level," the man should be proficient in at least -- I would say three types of equipment to meanfully employ himself or have any effect for him going outside.

Q Do you mean any of the dozers or any of the backhoes or any of the front end loaders?

A I would say one of each.

Q I meant that.

A The backhoes -- that is correct.

Q You don't have to run the cherrypickers or could he operate this instead of the backhoe?

A The cherrypicker, this isn't a part of our equipment. We run it on the outside.

Q What is the level a man must reach to go out, he has to proficient? Anything else?

A How to do certain things with the backhoe, dig a trench in a certain amount of time where it would be profitable to the contractor; load a truck in a certain amount of time. Simultaneously dig a trench and load a truck at the same time, too.

Q Do you teach any repair skills at the school?

A No. What we teach at the school, sir, is basic maintenance, starting up machinery, checking the oil, water and battery, make sure the machine is ready to go out and do a day's work.

Q Do you give a final test?

A Yes, we do have a test out there. It is like I said, a certain amount of time limit on each of these

operations I mentioned before.

Q When do you give this test?

A That could be up to the individual himself, too, because in this business there are some people that catch on say more quickly than other people.

If we feel a man is doing real well we give him an opportunity and give him the opportunity to take the test and if he passes, he graduates from the school.

Q Is that written or practical?

A Practical test.

Q Do you have any written materials for the school?

A Yes, we do have paraphernalia on the different equipment, outfits that manufacture the stuff.

Q What kind of paraphernalia?

A Booklets on the maintenance, oil, water, different capacities of different machines.

Q What about teaching safety?

A This is part of our course out there, too.

Q Any books on that?

A Yes, we have safety books, too.

Q Any classroom facilities?

A We do have a certain amount of time in the morning before we bring the men out in the field or later in the day, explaining to them the different safety

regulations, about what is best to look for out in the field for their own safety as well as the people working around them.

Q This is in the classroom or on the site?

A Both ways, out in the field -- it is according to the weather, too.

Q You do have a classroom, though?

A We have a trailer out there.

Q Do you show any films or slides?

A We have in the past, yes, sir.

Q Frequently or infrequently?

A Not too frequently because the films are good up to a certain point but we figure experience out in the field is of more value to the men themselves.

Q When a man passes the test, does he get in the union?

A When he passes the test he graduates and is taken into the local.

Q Does he have to be working when he passes the test to get in the union?

A There are times they are working before. If he graduates and it is time for him to take the test and he graduates, he is taken into the local.

Q He doesn't have to have a job at that time?

A No, sir.

Q Do men who go to the school also shape up at the day room, if you know?

A Yes, if they don't have any pursuits on the outside where they can sit down there they will be. But we have many that have other jobs at the school. Naturally they have to support a family while learning but there are cases of people coming into the hall.

Q The training school is once a week on Saturday?

A Yes.

Q All day on Saturday?

A Yes, sir.

Q How many are in your school now?

A At the present time I believe there is 56.

Q How many people graduate in a year?

A In the past we have been averaging I would say about twenty.

Q How many of those twenty are white and how many are black?

A It is half and half. Sometimes there are more black graduating than white.

Q On an average, though.

A I would say about half and half.

Q Will you produce for us the books and other

paraphernalia that you use at the school?

A Right now?

Q No, but sometimes next week or so.

A Yes, sir.

Q Is there any other training out at that site for the Local 14 men if you know?

A Local 14 does have a training school at this site, too.

Q Do you know what occurs at that training site in 14?

A What occurs there?

Q What do they do?

A Training people to operate equipment and retraining their people.

Q What do you mean retraining?

A They have people that wouldn't know how to run certain pieces of equipment and go out and get them to train on that.

Q Cranes?

A That is correct.

Q And people at the 14 training site are 14 union members?

A I really don't know, sir. I don't get into that.

Q Have you ever asked any of the 14 men what they

are doing?

A No, sir, we have enough to do with our own end. Actually, we don't get into too much with them.

Q How do you know they are doing retraining?

A I have heard remarks passed that a fellow -- in fact, I have seen a fellow in the business tell me I just want to get my hand in, what they say in the business, on a couple of pieces of equipment I have never been on.

Q How many people take training on cherrypickers?

A Well, we are always on there on Saturdays, we have to allow a certain amount of time to each, sometimes we have six people waiting to get on the cherrypicker to spend some time.

Q In the course of one year, how many men graduate from the cherrypicker class?

A I really don't have that figure at my fingertips right now.

It would come to the same figure because we will get these people on the cherrypicker that are graduating.

Q Do you have some Local 15 members coming to learn that?

A Yes, because there is a license required for the

cherrypicker.

Q Do you train them out there or help them get their license?

A Yes, sir.

Q It wouldn't be as high as ten or twelve hundred men graduating on cherrypickers?

A It could be it. It could be around that. I don't have the exact figure at my fingertips.

Q How many instructors are there at the school?

A I believe at the present time we have six out there.

Q Out there each Saturday?

A Yes.

Q Who are these men, where do they come from?

A Men that volunteer their time to teach these people about the equipment.

Q If you know, how do men today get experience in order to get into the union?

A How do they go about it?

Q Yes, sir.

A We have outside the training school -- really I don't know. I know there are equipment schools around but we don't have any affiliation with them.

Q Do all of the men who now come into Local 15

get their experience at your training school?

A No, sir. There will be men coming down there from a contractor. If a contractor has a man and he is qualified, experienced man and out working, he is taken into the local.

Q Right away?

A As soon as we see the contractor has work for the man and we see the man is qualified and the contractor says he is qualified.

Q How long will a man have to be working for a contractor to show that he is qualified and can get into the union?

A That is up to the contractor. He knows if the man is qualified and wants to keep him on.

Q If he kept him on a couple of weeks can he get into the union?

A Yes, sir.

5.2pm Q Are there any criteria today for a man getting into the union?

A I don't understand that question, sir.

Q Are there any rules about how long a man must be working?

A How long he must be working before he comes into the local?

Q That is right.

A Not that I know of, sir.

Q There aren't any real criteria about that?

A I mean, a man could be working at the business one month, two months, three months and we might not even know about it.

But if he comes in and the contractor has run into a man on the job and the contractor says he is a qualified man, we will take him into the local.

Q So long as he is on the job and working he gets in? That means he is qualified?

A I imagine so, or the contractor wouldn't have him on the machine, would he?

Q That is the union position as to his qualifications?

A We know the man is there working at the business, at the trade.

Q That is enough for you?

A I would say so.

Q Does Local 15 do any compressor work?

A No, sir, outside of repairmen.

Q That is 14?

A Yes, sir.

Q You do the cherrypicker. Where do you operate cherrypickers?

A On heavy construction, sir.

Q On the ground?

A Yes, sir.

Q Are your cherrypickers the same kind that Local 14 operate?

A Same type, yes, sir.

Q Just operate in a different place on the site?

A Yes.

Q Do Local 15 men operate road graders?

A Yes, sir.

Q Is the road grader an easy or a difficult piece of machinery?

A I would say a difficult piece. One of our difficult pieces of equipment.

Q Is it an expensive piece of equipment?

A We really don't get into that. I never really asked how much a road grader would cost the contractor. I imagine the price of iron today it is not cheap.

Q Would you say that is one of the more expensive pieces of equipment in your trade?

A No, sir.

Q What would be more expensive?

A Different size payloaders that are going into tin yards, that would cost a little more.

Q You don't have road graders at the school, do you?

A No, sir.

Q How does a man learn how to operate a road grader?

A In my past experience I found that Number One, you have to be pretty good at operating other types of equipment that we have so that if a contractor is into that business he will more or less break a man in himself because once you do break a man in on a road grader you are more or less going to hold onto this fellow.

Q What does the grader do?

A Cut your subgrade and through stages right through the fine grade, spreading out stuff out down to a half inch, whatever it calls for.

Q Does Local 15 operate fork lifts?

A On certain types of work, yes, sir.

Q Local 14 operates them?

A Yes.

Q The same kind of equipment, just used in a different place?

A They may vary in size and it may be more heavy --

Q You mean --

A Down.

Q Are the foremen on the job members of the union?

A We have maintenance foremen on the jobs.

Q Are there any other foremen on jobs?

A No, sir.

Q Isn't there a dozer foreman?

A No, sir.

Q Who does the man operating the dozer report to, the superintendent or who is it?

A He reports to the foreman or grade foreman or reports to the master mechanic or maintenance foreman on the job. It is all according to the size of the job.

Q Are there any jobs in the industry that the men don't like particularly, as far as you know?

A Any jobs in our industry?

Q Yes.

A Not that I know of.

Q All the same to everybody?

A I never get any complaints.

Q I mean I am not trying to ask you a trick question. Are there some jobs that people don't like as much as others?

A I would imagine that you have that in every phase of industry, certain jobs certain people don't like.

Q You have been at the day room, operating the day room?

A I am down there, yes, sir.

Q Operating the out of work list?

A Yes, sir.

Q At the day room when you get a contractor's request for a job, how do you decide who to pick from your list?

A Well, the list is there in front of you and we go down the list and if the man is qualified he is sent out.

Q Is it the first man down the list?

A It doesn't necessarily have to be that way, sir.

Q How else would it be?

A Because if a man is there and qualified he will be sent out. But there may be a type of equipment, a piece of equipment the man will admit himself he is not that proficient on and he would rather not go on it.

Q Sometimes the men wait at home when they are on the list to get called from the business representative?

A I have men that wait at home and who come to the hall on their own and solicit their own jobs.

Q Can you get your name on the out of work list by calling in from home?

A If they are sickish or a breakdown in your car, that happens, yes, sir.

Q But otherwise you are supposed to come in?

A Not necessarily. They are supposed to, but they don't have to.

Q If you want to use the day room you are supposed to come in?

A Yes, there are men that come in and sit around.

Q How do you know that a man actually can operate a piece of equipment that he lists?

A Well, actually with something like that we ask the man and if we are not too familiar with the man himself, which there are so many people coming in and out of that place, we take him at his word, and send a man out on that particular job. Then it is up to the contractor actually to say whether the man is doing the job or not.

Q Unless you get a complaint from the contractor, the guy is working out?

A As far as we know, sir.

Q You also have welders under your jurisdiction?

A Yes, sir.

Q Do all of your welders have certification now?

A Certified welders, you mean?

Q Are welders certified?

A Not all of them, no, sir.

Q How many members are certified as opposed to uncertified?

A I really don't know, sir.

Q Are more certified than not?

A Yes.

Q Did you ever get a complaint from anyone, either contractors or -- not a contractor, but from union members where contractors are trying to work on union men?

A I don't understand that question.

Q Do members ever call in the hall complaining to you or at meetings that so and so is using non-union men in our work?

A Yes, we get calls occasionally, yes, sir.

Q Do you know what happens when you get a call like that?

A Well, if we get a call and the man is doing a job, we will take a ride out there and we don't stop the man from working or anything like that.

Q What do you do when you take a ride out there?

A Just ask the man if he would want to come into the union, if he is a qualified man.

Q If they are non-union men on the job you would ask him to come in?

A What particular type of work are you talking about?

16 arsr Guma - direct

Q Any job in your trade.

A Any qualified trade? We have jobs where a fellow is putting up one house and if the fellow is only doing the job two days, so the fellow himself wouldn't be that interested after we go out and talk to him.

Q Let us take Perini, that is a large contractor?

A He certainly is.

Q A man on the job site out there has been there a week or so and obviously is going to stay, you would ask him to come in?

A Yes, sir.

Q Do you keep any records of how long your men are out of work?

A Not that I know of. I don't.

Q Is there any formal application or form that a man must fill out to become a member of Local 15?

A No, sir.

5.3pm

Q He just sees one of the business agents and asks?

A When he does get ready to come in, he will fill out this application for hospitalization and pensions and all that.

Q Does he need a sponsor?

A No, sir.

Q Any recommendation?

A Recommendation from a contractor that the man is qualified or able.

Q Does he have to appear before any union committee?

A No, sir.

Q Do you have many men trying to transfer into Local 15 from Local 15C?

A There are some occasions when they do transfer.

Q What happens , if anything, when they try to?

A Just take a transfer from 15C to A if they are out working on the outside.

Q If they are working on the outside?

A Yes, sir.

Q A shop man, can he transfer over to your union?

A We never ran into that before.

Q How about 15D?

A No, sir, I never had it.

MR. DEVORKIN: I have nothing further.

MR. BRADY: Just a few questions.

***

CROSS-EXAMINATION

BY MR. BRADY:

Q Mr. Guma, at the time you entered the union, did you have any relatives or friends in the union?

A No, sir.

Q At the school you said that there are six

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instructors?

A Yes, sir.

Q Are there any black?

A Three.

MR. BRADY: No further questions.

MR. REARDON: We have no questions, your Honor.

THE COURT: Thank you.

[Witness excused.]

THE COURT: We will take a short recess. Do you have another witness? If not I can adjourn at any time.

MR. DEVORKIN: We have two in the courtroom and one on the way. We might be able to finish with all of Local 15 officers today, your Honor.

THE COURT: I am going to adjourn at 4:30 at any rate.

MR. DEVORKIN: This witness was very fast.

THE COURT: We will take a short recess.

[Recess.]

MR. DEVORKIN: The Plaintiff calls William Delaney.

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W I L L I A M L . D E L A N E Y , called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Are you presently employed?

A Yes.

Q How?

A Business representative, Local 15C.

Q How long have you been business representative for 15C?

A Four years.

Q Do you hold any other office in the union?

A Executive Board Member.

Q How long have you been an Executive Board Member?

A Approximately 1965.

Q How did you become business agent?

A I was appointed business agent by the business manager.

Q Who was that at the time?

A Thomas Maguire.

Q When did you join any branch of Local 15, if you did?

A 1958.

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Q Which branch was that?

A Local 15.

Q It wasn't 15A?

A No.

Q Have you ever been a member of any other branch?

A No.

Q Ever a member of any other branch since then?

A No.

Q When did you first approach Local 15 about joining the union?

A I think it was July of 1958.

Q Were you working at the time as an operating engineer?

A Yes.

Q Where were you working?

A As a maintenance man.

Q As a maintenance man?

A Yes.

Q Where?

A Where was it at the time?

Q Yes.

A I believe it was at the Throgs Neck Bridge that was under construction.

Q Are you sure you weren't working as a laborer at the time?

A That was prior to July.

Q You were working as a laborer up until July of 1958?

A Yes.

Q What were you doing as a laborer?

A I was working around maintenance men, doing laborers' work, doing both, working around heavy equipment.

Q Then you approached Local 15 about joining.

A Yes.

Q And what was said to you, if anything?

A I believe I called the business representative and he said he would try me out to, to see if my qualifications were good enough to hold down the job.

Q And what happened?

A He tried me out.

Q Where did he do that?

A I went to the Throgs Neck Bridge in 1958, in July.

Q And how long did you work there?

A Three months, I believe.

Q What kind of a job was that?

A That was a maintenance man.

Q You were a mechanic, is that right?

A Yes, maintenance man.

Q What kind of mechanic's experience did you have before that?

A I had worked -- prior to working as a laborer?

Q Yes.

A I had worked in gas stations and on automobiles and gas engines and what-not.

Q How long were you at this job, the Throgs Neck

Bridge, before you came into the union?

A I believe I was there three months.

Q Did the union give you a test of any kind?

A At that job? No.

Q Does a maintenance engineer work on any particular kind of equipment?

A Yes, we were putting cranes together at the time.

Q Were you a mechanic or were you a helper ?

A I was a maintenance man, maintenance engineer.

Q And you were paid union scale?

A Yes, I was.

Q How many other men did you work with at the time?

A I think there were four.

Q Did they know more about cranes than you or less than you about cranes?

MR. BRADY: Excuse me, may I have that question?

[Question read by the Reporter.]

A That is hard to answer.

Q Well, did you learn anything from these men?

A Yes.

Q Was this a diesel engine you were working on or a gas engine or what?

A On this job?

Q Yes.

A We were putting the crane together.

Q You weren't doing engine work?

A No.

Q Had you ever worked on a diesel engine before that?

A No, I hadn't.

Q Had you ever worked on a diesel engine before you joined the union?

A No.

Q After this job, what did you do next?

A I went to work on a heavy highway job.

Q Doing what?

A As a maintenance man.

Q And by this time you were in the union?

A No, I wasn't.

Q How did you get this second job?

A I was called at the house by one of the fellows I worked with on the first job.

Q And this was outside work again?

A Yes, it was.

Q Were you working on engines or were you putting together machinery?

A We were repairing machinery at that time that would break down -- or preventative maintenance on

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machinery.

Q When did you actually join the union?

A Sometime in the latter part of 1958.

Q What kind of work did you do between the job up at the bridge and the time you joined the union?

A Basically the same type of work, only it was more extensive, on construction machinery.

Q And the outside men get paid more than the inside men, is that right?

A Yes, sir.

Q When you joined the union, how long had you actually been working, so far as you remember?

THE COURT: You mean when he was working in a garage?

Q When you joined the union, how long had you been working under the union's jurisdiction?

A Quite awhile -- I don't remember -- a couple of months.

Q A couple of months?

A Yes.

Q Did you ask to join the union or were you asked to join the union?

A I was asked to join the union.

Q Who were you asked by?

A Business representative.

Q Did he come out to the job site or did he call you at home?

A I believe I saw him on the job site.

Q You said --

A I am not positive -- I believe I saw him there.

Q At the time you joined the union did you have any relatives in the union?

A Yes, I did.

Q And who were they?

A My father.

Q Who is that?

A Joseph J. Delaney.

Q Did he hold any office in the union at the time?

A He was general president of the International at that time.

Q And before that he held a local union office, is that correct?

A Prior to 1957.

Q Any other relatives?

A James Delaney, Vincent Hannigan and Steve Hannigan.

Q Did you ever go to a union training program?

A No, sir.

MR. DEVORKIN: May I have the Court's indulgence?

[Mr. Devorkin examines.]

Q Do you also have jurisdiction over 15B?

A Yes, I do.

Q Are you the sole business representative of 15B?

A No, sir; just in one phase.

Q Who else is a business representative of 15B?

A John Murphy, Thomas Gerrity.

Q What do the men in 15B do?

A The men that I represent are members of the Port of New York Authority.

Q What kind of work do they do?

A They are maintenance men.

Q Do they do any operating of equipment?

A They operate their own equipment, yes.

Q What kind of equipment is that?

A Payloaders, bull dozers, graders, backhoes.

Q Similar to that equipment as is in 15.

A Certain pieces are similar, yes.

Q Which would you say is the largest shop under 15C's jurisdiction?

A H.O. Penn Machine Company.

Q How many shops do they have?

A Three under my jurisdiction.

Q How many men are employed as 15C men in the shops?

A 165 -- I don't know -- approximately.

Q What happens today if a new man, non-union, comes to a 15C business agent and asks to get help looking for work?

A I would refer him to an employer if I could.

Q Do you give him any kind of test?

A No, it is up to the employer to do that, to see if he is qualified.

Q Do you put him on any kind of list?

A I would put him on an out of work list.

Q How do you know he is qualified or not to do the work that you send him out for?

A I don't. In my case the employer is the sole judge of the qualifications.

Q So you give a man a shot by sending him out?

A No, they would interview him.

Q But you would refer him to the job?

A Yes, sir, if he had qualifications.

Q Do you get calls frequently from contractors for help?

A Occasionally I do.

Q Do you ever talk to contractors about their calling you for help?

A If there are men I have available that could fill

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the qualifications, yes, I will.

Q What would you say to the contractors?

A I have men that would fill the qualifications, if they needed anybody.

Q Is there ever any friction between the union and the contractors as to the contractors not calling the union for help?

A No, there isn't.

6.2pm

Q You have never gone out to a contractor and complained about him hiring people without calling you first?

A No, sir.

Q Do you know if any of the other business agents have done that?

A I wouldn't know.

Q But you have never done that with H. O. Penn?

A No, I have not.

Q How long has H. O. Penn been under your jurisdiction?

A Under my jurisdiction?

Q Yes.

A As far as business representative?

Q Yes.

A Four years.

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Q So as long as you have been the business rep, H.O. Penn has come under your wing?

A Yes.

Q Do many of your men in 15C seek to transfer to Local 15?

A Occasionally I guess they do.

Q Do they have any success at that?

A If there is a need for them, yes, they do.

Q When a new man comes into the union and has good experience, what if anything happens to him?

A Well, there is a problem about qualifications which most of the employers insist upon, the qualifications.

Q What kind of qualifications does a man need?

A To be either a full-fledged mechanic or a B mechanic.

Q What is a "full-fledged mechanic"?

A He would be an A mechanic that would be fully knowledgable about all types and able to handle the contractor's equipment.

Q And what about a B mechanic?

A One who is not that knowledgable but has to be under supervision of an A mechanic or a foreman or supervisor.

Q 15 does not have the same kind of mechanical

classifications, does it, as 15C?

A No, sir.

Q It just has a mechanic.

A Excuse me, 15?

Q 15.

A Maintenance engineer, I believe it is called.

Q Is there any helper category there?

A No.

Q Does a man coming into 15 as a mechanic have to be as good as a man coming into 15C as a mechanic?

A Yes, I believe he would.

Q A 15 mechanic would be equivalent to a B mechanic or an A mechanic?

A Equivalent to an A mechanic.

Q What kind of experience does a helper need in the 15C jobs?

A He has to be familiar with the use of tools and have some partial knowledge of construction equipment or some partial knowledge of the phase of the work.

Q Do many of your men work as helpers?

A No.

Q Very few.

A Very few.

Q Do you keep an out of work list for 15C?

A I do.

Q How does one get on it?

A Well, they call and -- they call, talk to me, or they come down on grievances and I talk to them, in that fashion.

Q And how do you use that out of work list to fill job requests?

A If an employee would call looking for a qualified man, then I would then use the list.

Q Precisely how would you use the list? Which man off the list would you sent out?

A Whichever man had the qualifications to fill that particular job.

Q And if two men had comparable qualifications, what would you do?

A Send the first man.

Q The first man that called in?

A Yes.

Q Do you have any notations in there about how long he has been out of work?

A No.

Q As far as you are concerned it is the time that he calls in that counts?

A Yes.

Q I am not trying to ask trick questions. You have no way of knowing how long he has been out of work when he calls?

A We do not have that many out of work that long, with that qualification.

Q Mechanics are in general demand?

A They work 52 weeks a year, and they are basically steady employees.

Q And a good mechanic can always find another job.

A They usually do.

Q Is there any apprenticeship program for 15-C personnel?

A No, sir.

Q There is a clause in the contract calling for one, isn't there?

A Well, it has always worked for the last -- the low man as the handy man or helper, and he progresses through the four classifications up to full-fledged mechanic.

Q You generally negotiate a clause in your bargaining agreement that calls for an apprenticeship program between you and your employers?

A Yes.

Q Have you been a party to those negotiations?

A Yes, I have.

Q Is there any program set up pursuant to that clause?

A No.

Q Do you know if the employers are desirous of having such a program?

A I can only speculate on the rumors that I have heard, there are.

Q Have any of them ever told you so?

A Maybe one.

Q Which one?

A I don't recall which one at the moment.

Q What happens when they tell you so?

A I have talked about it.

MR. DEVORKIN: May I have your indulgence for just a moment, your Honor?

(Mr. Devorkin examines.)

Q If a man is working in a shop under your jurisdiction and he is not yet a member of the union, how long a period of time must elapse before he can become a member?

A Six weeks under the contract.

Q And that is automatic?

A Yes, provided he has met the qualifications of the employer.

Q If the employer keeps him for six weeks, then he

can get into the union?

A Yes.

Q He doesn't pass any test?

A No.

Q He doesn't need a sponsor?

A No.

Q Or go before any kind of committee?

A He would go in front of the executive board.

MR. DEVORKIN: I have no further questions.

MR. BRADY: Just one question, your Honor.

CROSS EXAMINATION

BY MR. BRADY:

Q Mr. Delaney, what is the territorial jurisdiction of Local 15-C?

A I have the five boroughs of New York, plus a few shops in Westchester County, New Jersey and Long Island.

Q Is there anything up further than Westchester County?

A Yes, I have one in Poughkeepsie.

MR. BRADY: No further questions.

MR. KENNEDY: I have no questions.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Delaney, those shops that are in Westchester

County or New Jersey, are those employers that also have shops in New York City?

A Not necessarily, no.

Q Well, let us take H.O. Penn, for example. They have shops outside of New York City, don't they?

A Yes, they do.

Q How many people in 15-C work outside of New York City?

A Gee, I couldn't guess at the figure.

Q Is it a handful?

A No more than that.

MR. DEVORKIN: Nothing further.

THE COURT: You are excused.

(Witness excused.)

MR. DEVORKIN: The plaintiff will call Mr. Gambino.

C H A R L E S G A M B I N O, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

MR. DEVORKIN: Your Honor,could I ask your permission -- I misunderstood Mr. Delaney's last answer. May he just wait in the courtroom until Mr. Gambino is off? I just want to clarify something -- I think he said one thing when I am told he said something else.

THE COURT: All right, Mr. Delaney, will you wait?

MR. DELANEY: Yes, sir.

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Gambino, are you currently employed?

A Yes, I am.

Q How are you employed?

A I am business representative for Local 15-D, Operating Engineers.

Q How long have you been business representative for 15-D?

A Since 1967.

Q Do you hold any other office in the union?

A No, I don't.

Q How long have you belonged to Local 15?

A Since its inception, 15-D, in 1961.

Q You are a member of 15-D.

A Right.

Q Do you have any relatives in the union?

A Yes, sir, I do.

Q Who are they?

A I have a cousin.

Q How did you begin to work in the surveying trade in New York City?

A Well, I got the job in New York City through an employment agency in 1958, after I got out of school -- just in a survey shop, you know, non-union.

Q What kind of work was it?

A Surveying.

Q Were you a rod man or --

A I was a rod man.

Q Had you had any experience as a rod man before that?

A Only a little bit in school, in Syracuse.

Q And your shop was organized into 15-D?

A No. I bounced around a while. Then I got into the construction field in 1958 or '59, I got into construction work for --

Q What did you do in construction?

A Field engineer -- working for the company. I was a company employee. I had no union, and then I was there almost three years, and we heard rumors that a union was being organized. First it was another union that was supposed to be the Teamsters or the Carpenters, and I was on a committee that went around with the men and talked about the union, to organize them -- the field engineers in the company that worked around were all non-union, and there was a choice of either the Teamsters or the Operating Engineers, and the men decided to support the Operating Engineers and they voted it.

Q Today is it part of your job to place your men with companies?

A Yes, it is.

Q And does that happen often or infrequently?

A Often.

Q And how does that actually happen?

A By telephone conversation, an employer will call and request one of the men -- either a party chief or a transit man or a rod man, whatever category the company requests.

Q And those union men have called you to tell you they are looking for work?

A Yes.

Q Where is that list actually, physically maintained?

A In my pocket.

Q Do you ever get calls from non-union men?

A Yes.

Q And what happens if there are calls?

A If they are qualified men we have them on the list also.

THE COURT: How many people in your local?

THE WITNESS: There's -- right now, your Honor, about 1250, give or take 20 plus or minus. I haven't checked it, but about 1250.

Q When a man calls in he tells you what he is qualified to do --

A Yes.

Q You don't know all these fellows, do you?

A Well, I know quite a few of them over the years. Some of them have gone but they still keep their union books in 15-D, but they have gone into management, project engineers; some in the office and some into the management end of it that I very seldom deal with, but a large majority I have either worked with them or passed them somewhere in the field. I have worked the field since 1958.

Q What kind of qualifications would a man have

to have when he first comes into the surveyor's end of the business?

A When you say "surveyors," in what category are you talking about?

Q Well, men usually start as rod men if they have no experience and then work their way up to transit man?

A Right.

Q And then up to party chief, is that correct?

A Right.

Q So let us say a fellow comes in to take the rod man's job; right?

A Right.

Q What kind of qualifications does he need?

A Well, he has to know how to chain, how to operate several types of rods. The general duties of a rod man -- in keeping his function. In the field a party, which I can explain for an hour, but basically he is the low man in the field party, but at the same time he has to maintain all the equipment and make sure everything is right about the instruments, stakes, ribbons, tacks -- it depends on where they are surveying. If they are in the woods he has to maintain all the equipment for cutting brush, clearing lines in the suburban areas.

Q Can you learn how to do that on the job?

A Yes, you can.

Q He doesn't have to be able to do that before he gets sent out.

A No.

Q Do you have a school for surveyors?

A Yes, we do.

Q And where is that school?

A It is the Institute of Design and Construction in Brooklyn.

Q And the union actually pays for the courses?

A That is correct.

Q That money comes out of the training fund that the union has?

A That is right, paid directly to the school, and they set up the program for Local 15-D, the field engineers.

Q That is the training fund to which the employers contribute for each man working in their jurisdiction in your trade.

A Correct.

Q And a man can come off the street without any experience and go to the school, can't he?

A Well, yes, we have men in the school that have no experience. As a matter of fact, they are working in other things, just to keep themselves going and subsidized --

they are working in another field but they have a background of maybe surveying and want to increase their background and want to increase their field. Right now we have a pretty tight employment situation. We may have a couple of hundred out of work. So if this man will go to school, and if there is any opportunity for him to go to work --

Q Where do the men who go to school come from? Are they union members or non-union members who get into the school?

A I would say the majority of the people in the school are union members, and a larger percentage of them in fact, they are upgrading themselves to go to a larger level -- rod man trying to get to be a transit man, transit man trying to elevate themselves to party chief.

Q The membership is generally aware of the school, is it not?

A Yes, they are all aware of the school.

Q You make announcements at meetings and so forth?

A Yes.

Q Do you announce openings in the school?

A Letters go out in August -- in the latter part of July for registration, which starts in September,

the Fall semester.

Then we send letters out in November for the beginning of registration in January, for the Spring semester. It is five nights a week.

Q Do you ever sign men up at union meetings to get on the school list?

A No.

Q Are there any signs posted at the union office or the union day room about the 15-D school?

A I have never been out there -- I have seldom been out to the day room. I don't know what is posted in the day room.

Q But you have never posted any signs.

A No.

Q Do any of your 15-D men come from having done work in other branches of 15?

A I only know of one or two that came from other branches -- a couple of 15-C men that came -- that transferred into 15-D because they couldn't do the shop work -- I forget who it was -- or they had a physical handicap or something.

Q Do men ever come to 15-D who aren't members of 15 but have had some construction or operating engineers' experience and want to learn the 15-D trade?

A I don't follow the question when you say "other operating engineers" -- you mean other branches of 15 are you talking about?

Q Take people who are not union members. Do people ever come to 15-D and say, "I have had a little construction experience," or "I have had a little experience with the machines an. I would like to learn the 15-D work." Does that happen?

A Are they members of 15, did you say?

Q No, they may not be members.

A No.

Q When men call in to get on the out-of-work list do they call the union office or the day room?

A My list -- my 15-D list?

Q Yes.

A They call the office.

Q Do you have many of the members sending their relatives and friends down to get in the school?

A Yes.

Q Do people al o get experience while they are at the school?

A Yes, they have experience. Some men work in the field summers. Some of the fathers find a spot on the job for their son, or a cousin -- just happen to find

a spot on the job for the summer, when the season seems to be at its busiest, and a contractor will put an extra man on, the employer. In the meantime they attend school. Others have field trips in Brooklyn and Manhattan, in various parks, City parks on Saturdays.

Q Do many of the men in 15-D seek to transfer to 15?

A No.

Q It doesn't happen frequently?

A Very seldom.

Q Are there any rules about the contractors not hiring the people on their own? Any rules or union preference about calling the union first?

A Preference.

Q Do you make that preference known to the contractors?

A Well, only when a contractor gets to hire someone and that individual messes the job up or fouls the job up, then they will call you and say, "Joe Blow fouled my job up."

"Well, he didn't call me. I don't know Joe Blow."

Sometimes they hire people off the street.

Q Do you usually hear about that?

A Usually.

Q Do you do anything about that?

A Do what?

Q Do you do anything about that?

A No.

Q How long must the man work as a 15-D man before he can get into the union?

A There is no set time. It all depends on the work situation.

Q Can you tell me what the range is?

A That is hard to estimate. It could be a month if the employer has a man and he is satisfied and he says, "I want to keep this man."

Before we go ahead and take the man's initiation money and everything, since there is a bad work situation, we will talk with the employer to see if the man has a steady job. If he has, we will tell the individual that the employer wants to keep him, to come down and get signed up and get initiated into the union.

Q Many men in your trade move from job to job, do they not?

A Yes.

Q So many jobs are not steady jobs, or at least working for one contractor, are they?

A No.

Q If a non-union man gets one of those jobs, what time will he get to come into the union?

A You mean if he moves from job to job on his own or I send him from job to job? I don't follow the question. If he gets the job on his own or I send him there?

Q Let us take when you send him out.

A Right.

Q What happens with respect to his getting into the union, that man.

A Well, if he qualifies and the contractor is happy with the man, and satisfied with his -- we will check with the man after a period of time -- a month, six weeks, eight weeks -- there is no set time, and if the work situation is good we will sign the man up.

Q What if the man found the job himself?

A The same thing.

Q The same thing would pertain?

A It would be more than likely he will approach me for union membership. I might not know he is on a job or something, and I will check with his employer to see if everything is correct.

Q But if he approached you for membership, and he was qualified, that is, the contractor said, "Yes, he is

working for me and I am satisfied," he would get into the union?

A Yes.

Q You don't worry about the time that he is working for the contractor?

A Well, I told you the time -- if he has been working for a period of time and the work situation warrants, where we have work around, and instead of taking his initiation and then having the man pay his initiation fee and then let him sit home for two months out of work -- we don't do this. If there is work and we see that the man is qualified and the employer is satisfied, we initiate the man and he works steady.

Q So if he has to come in and work isn't usually good you may tell him to wait around?

A Right.

Q Well, what if he says, "I don't care about the initiation fee. I will pay it anyway," do you let him in or do you tell him to wait?

A Well, we would much rather have the man wait until the work situation improves.

Q How do you decide when the work situation improves?

A By the out-of-work list.

Q And what other criteria do you use to make that decision?

A Well, if we are getting more and more men out of work every day, the final outcome is obvious, it is going to be a long drawn-out spell. Sometimes it is a couple of weeks and you have a big out-of-work list, and sometimes it will keep going and keep going later into the winter, you could have thee or four or five hundred men out of work.

Q How long is your out-of-work list right now?

A I would say about 180 men.

Q Is that large?

A Yes, at this time of the year it is quite large.

Q What is a small out-of-work list?

A Sometimes -- well, we have several individuals that are always on the out-of-work list.

Q What is the lowest of the out-of-work list has ever been?

A Half a dozen or so.

Q Is there any average range that it has been?

A No. They usually don't stay on the out-of-work list too long. If there is work the men come in and go right out. At other times, they may pick up work on their own, or other members will give them a buzz at home

if they know they are out of work.

Q Right now there are at least 180 men out of work, looking to you to help them get work?

A Yes.

Q You don't know what length that list must be before a man can come into the union?

A I don't understand that question.

Q You said if the work is bad, the work situation is bad you will ask a man to wait. How long must the list be before you think the work situation is bad?

A Well, it is no set list. I mean we usually get down to about 70 or 80 men,and we see it starting to pick up -- several big jobs have been let -- like the Second Avenue Subway, and sections of the tunnel work have been let. We know basically that the men that are out of work, who paid their initiation fee, it won't be in vain -- they won't be sitting home all winter with their initiation fee in their pocket, especially a man with a family -- it is rough to take an initiation fee while there is no work.

Q How big is that initiation fee?

A Well, now it's $105 for three months' dues.

Q How much do these men get paid an hour?

A At various rates.

Q What does a rod man get?

A Well, there are three different rod men -- there is consultant, there is heavy, there is building.

Q Take the building.

A The building is about -- well, it is $213 for 35 hours.

Q The transit man, what does he make a week?

A In building also?

Q Yes.

A 248.

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7.1pm

Q Did you ever tell men in 15D not to change jobs without checking with you first?

A We try to keep tabs on things so we know where men are, not bouncing someone else out of a job. We advise them it would be less complicated in our work, and our job -- to my way of thinking as far as business agent, to let us know if they transfer out of a job or leave one company and go to another job.

Q They are not supposed to leave the company for another job unless they check with you?

A No, I didn't say that. If they leave one job A to a job B, we have a job to satisfy the employer also. We try to have him call us so that we close the door after they go to it. You know what I mean?

Q Do you ever go around checking job sites to see if non-union men are working as surveyors?

A Yes.

Q What do you do if you find any non-union men working as surveyor?

A Try to organize them.

Q Do you ever find non-union men working at the union contractor's site?

A Sometimes.

Q What do you do then?

A The same thing, try to organize them.

Q And the union contractor's site, that is operated by the Operating Engineers Union contractor's site and is supposed to be a union man, isn't he?

A You say that --

Q I may have misspoken.

A You say working f r the contractor?

Q Insofar as the contractor has a contract with you he is supposed to be a union man, isn't he?

A Supposed to be a union man or else we have the right to organize him on the job.

Q What do you mean organize him on the job?

A In other words, non-union surveyors hired by a non-union contract that comes to do surveying on a construction job?

Q Yes, sir.

A The men are not employees of the contractor, it is subbed out to a surveyor's outfit?

Q Yes, sir.

A We go in and talk to the man and tell him this is a union job and would you like to be union. We explain what the contract is.

Q Do the surveyor employers or contractors ever hire non-union men?

A Surveyors' employers? Very seldom.

MR. DEVORKIN: I have nothing further of this witness, your Honor.

***

CROSS-EXAMINATION

BY MR. BRADY:

Q Mr. Gambino, what is the territorial jurisdiction of Local 15D?

A Nassau, Suffolk, Westchester, Putnam and the five counties of New York -- I'm sorry, everything south of the Poughkeepsie City line.

Q Was there a time, Mr. Gambino, when the union was looking for qualified men?

A Yes, there was when I was appointed assistant business agent, the business agent had passed away in 1967.

In 1967 I believe we had ads in two of the newspapers and had a real boom in construction.

Q How long did you run the ad, do you recall?

A The ad was in prior to my getting in there in July of 1967. I know it was the end of that summer, September, we had it in several papers and also with several employment agencies, for qualified engineers.

Q In a New York City newspaper?

A Yes, sir, the New York Times and I believe The Post and maybe one other.

Q Do you know was the ad in on a daily basis, every day?

A Yes. We took it by the week but for every day, every issue.

Q At the time you entered the union did you have any friends or relatives in the union?

A No.

Q At the time you entered how did most people become members of the union?

A At the time everyone was non-union. We were organizing on the job and the representatives came around.

Q Mostly through organization?

A Through organization and signed pledge cards and some of us got fired but we finally got the union.

Q As a matter of fact, there were NLRB hearings at that time?

A Yes, sir. I attended several of them.

MR. BRADY: No further questions.

MR. KENNEDY: No questions.

***

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Of the 1,382 members of 15D, how many work in New York City?

A I don't know offhand.

Q How many don't work in New York City?

A I don't know.

Q How many work in Westchester?

A I wouldn't know offhand. They bounce around. I could give you some kind of an estimate. We have men in Riverhead, Poughkeepsie, field parties, and they bounce around with the contractors in jobs that I might not even be familiar with.

Q A man might work in Nassau today and Queens tomorrow?

A Exactly.

Q When 15D began, did it begin in New York City?

A Not to my knowledge. The earliest inception was out, I guess, in Suffolk County, Nassau County on the Expressways that we first started. There was organizing there.

I was working in New York at the time but I know there was a drive out in Long Island.

Q How many jobs approximately are there in Long Island for surveyors at this time?

A I have no idea.

Q New Jersey?

A We don't cover New Jersey.

Q You don't cover New Jersey?

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A No.

Q Westchester?

A I have no idea.

MR. DEVORKIN: Nothing further.

MR. KENNEDY: I have nothing.

MR. BRADY: No questions.

THE COURT: You are excused.

[Witness excused.]

THE COURT: Do you want to recall Mr. Delaney?

MR. DEVORKIN: Yes, sir, I would like to call Mr. Delaney.

W I L L I A M D E L A N E Y , previously sworn was recalled and testified further as follows:

THE CLERK: You are still under oath, Mr. Delaney.

***

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Delaney, I believe you testified that 15C had some jurisdiction or responsibility in Westchester County?

A Yes.

Q Any other counties outside of New York City?

A Westchester, Long Island, New Jersey, Poughkeepsie.

Q If you know, how many of your members are

employed in Westchester County?

A Westchester County?

Q Yes.

A Including Poughkeepsie?

Q Yes.

A Westchester County and Poughkeepsie, approximately 70, 75.

Q New Jersey?

A About 50, 55.

Q How long has 15C been out in New Jersey?

A Quite a number of years, before my time. I wouldn't know the answer.

Q Is there a charter covering New Jersey?

A Does the charter cover Jersey?

Q Yes, sir.

A That was -- it worked where they were based in New York City and they moved to Jersey to a separate branch, we covered both of them and through the years there has been a relationship with the other local where we maintain it.

Q Is the same true of Westchester County?

A Yes.

Q And Nassau and Suffolk County?

A Yes.

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Q How many men are currently employed in Nassau and Suffolk County?

A Approximately fifty men.

MR. DEVORKIN: No further questions.

MR. BRADY: I have nothing.

THE COURT: You are excused.

[Witness excused.]

THE COURT: Do you have a witness you can complete in ten minutes?

MR. KENNEDY: Your Honor, I had conferred with the Government and we had estimated that we would probably conclude. I had two witnesses available and I asked if they might be relieved as long as went --

THE COURT: I feel we might as well adjourn.

MR. BRADY: Excuse me, your Honor. The witness that Mr. Devorkin talked about before, from 15D has come into the courtroom, Mr. Labait.

MR. DEVORKIN: I am not going to call Mr. Labait after all.

THE COURT: Very well, we will adjourn until Thursday at 10:30.

MR. DEVORKIN: May I take a minute and read a stipulation into the record between myself and Mr. Brady on behalf of 15?

9 arsr

THE COURT: Yes.

7.2pm MR. DEVORKIN: Plaintiff and defendant Local 15 stipulate that Local 15 currently has approximately 6,362 members of whom 415 are known to the union to be black or Spanish surnamed as follows: 15, 2,411 members; 109 black or Spanish surnamed.

15A, 702 members, 120 black or Spanish surnamed.

15B, 326 members, 48 black or Spanish surnamed.

15C, 491 members, 62 black or Spanish surnamed.

15D, 1,332 members, of which 77 are black or Spanish surnamed.

Of those minority 130 have been admitted since the lawsuit was started as follows:

15, 27 members, minority members.

15A, 70 minority members.

15B, 4 minority members.

15C, 18 minority members.

15D, 11 minority members.

THE COURT: Very well.

MR. BRADY: Your Honor, I want to make clear that that figure, I believe, 415 represents a figure up to the early part of this year and that is the approximate known.

THE COURT: Before the trial closes if anybody wants to modify or correct any figures, you are at liberty

to do so.

I suggest then that we adjourn until 10:30 Thursday.

[Adjournment taken until September 19, 1974 at 10:30 a.m.]

* * *

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

- v s - 72 Civ. 2498

LOCAL 14 INTERNATIONAL UNION
OF OPERATION ENGINEERS, et al.

19 September 1974
10:30 a.m.

[Trial resumed.]

MR. DEVORKIN: Your Honor, I am pleased to announce that we have a signed pre-trial order.

THE COURT: Very good.

MR. DEVORKIN: With a copy for the Court, and I might say that the copy has a couple of loose pages; they are a recent addition. [Handing.]

Mr. Gallagher may want to say something.

THE COURT: Yes.

MR. GALLAGHER: Your Honor, with the signing of the pre-trial order, I request your permission to withdraw from attendance on a daily basis, and to reserve our rights to come in as we go along.

THE COURT: Permission is granted.

MR. GALLAGHER: Thank you, your Honor.

MR. DEVORKIN: I also have a stipulation, your Honor, which I believe will save considerable time. I would like to read that into the record this morning.

THE COURT: Yes.

MR. DEVORKIN: Plaintiff, Equal Employment Opportunity Commission and defendant Local 14, the International Union of Operating Engineers, stipulate that Local 14 currently has 1,555 members, of whom 44 are known to the union to be black or Spanish surnamed, as follows:

14 has 1,398 members, 24 of whom are known to be black or Spanish surnamed; and Local 14B has 157 members, 20 of whom are known to be black or Spanish surnamed.

THE COURT: I take it that is agreed upon by counsel.

MR. KENNEDY: Yes, your Honor, it is.

THE COURT: All right.

MR. GLASSMAN: The Government calls William Wade.

W I L L I A M W A D E , called as a witness by the Government, after having been first duly sworn, testified as follows:

***

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Wade, by whom are you employed?

A International Union of Operating Engineers, Local 14.

Q And in what capacity are you employed?

A Business agent and safety director.

Q Are you business agent for both Local 14 and 14B?

A Yes, sir.

Q How long have you been in the trade of the Operating Engineers?

A Since January 18, 1935.

Q And could you state for us what your educational background is?

A I went to -- I graduated from Automotive School in 1928, I think.

Q Did you receive a high school diploma?

A Yes, sir.

Q Did you receive any college education?

A No, sir.

Q Could you describe for us the nature of your automotive training?

A It had to do with all types of motors, trucks, automobiles, ignition, electrical work -- everything that had to do with motors -- valves, engines.

Q Mr. Wade, when did you receive a union book?

A January 18, 1935.

Q And in what union did you receive a book?

A Local 184.

Q Is that an Operating Engineers local?

A Yes, sir.

Q Could you describe for us briefly the jurisdiction of Local 184?

A The five boroughs of New York City, just heavy construction work.

Q What do you mean by "heavy construction work"?

A Other than building work.

Q What types of specific equipment did you operate in Local 184?

A Cranes, shovels, pile drivers, derricks, rollers, floating equipment.

Q How did you get into the union?

A I worked as a laborer -- I started when I was nineteen and worked as a laborer from 1930 on this particular job until '33 or '34, I guess. They had a lot of equipment there, and I was working laborer over a period of three or four years I was there. The people on the equipment, I used to take care of the equipment, help repair it; also operating machines that moved cars back and forth -- just simple machines.

T2

Q Were you sponsored into the union?

A Yes, I was.

Q Do you know who your sponsor was?

A They asked me that before. I think it was my grandfather's brother, he was an old man.

Q When did you become a member of Local 14?

A They amalgamated in 1937.

Q When you say they amalgamated, what do you mean?

A Three engineers locals in the City of New York, Local 125, 184 and 403, were amalgamated and called Local 14.

Q Could you briefly summarize the type of equipment handled by Local 125 and Local 403?

A Local 403 handled all the work on building hoists, derricks, plasterers hoist, bricklaying hoist, anything that had to do with buildings, building work.

Local 125 handled mostly heavy construction.

Q At the time you received your book in Local 14 is it fair to say you had been doing mostly heavy construction work in Local 184?

A Yes, sir.

Q And approximately what date did you join Local 14?

A I don't know the exact date, but it was in 1937.

Q Mr. Wade, do you have any relatives in Local 14

at the present time?

A Yes, sir.

Q Could you give the names of them to us?

A My immediate relatives are my four sons.

Q May we have their names, please?

A William E. Wade, John Wade, Martin Wade and Thomas Wade.

Q Do you have any other relatives?

A Yes, I do.

Q Will you name them for us?

A My brother John transferred in from 825 in Jersey, belonged to another local.

Some people may call themselves relatives but they are very distant.

Q Are there any such distant relatives, do you know of, who are in the union?

A Yes.

Q Will you name them for us?

A I have two cousins with the same name as I have, the last name that is. They are not really my first cousins or anything, from way back some place. They are related distantly but not close relatives, George Wade and Frank Wade or Francis.

Q All members of Local 14?

A Yes, they are.

Q Do you have any members -- any relatives who are members of Local 15?

A I do have a brother transferred in from 825, David.

Q Any distant relatives in Local 15?

A No.

Q Mr. Wade, how long have you been business agent for Local 14 and 14-B?

A I was elected first in June of 1953.

Q Were you elected to both 14 and 14-B at that time?

A Yes, sir.

Q Have you been business agent for both branches since that time?

A Yes, sir.

Q Have you been reelected on occasions since then?

A Up until six years ago when in that case we just had the business manager was elected. He appoints the delegates.

Q By what individual were you appointed?

A Thomas Nolan.

Q Could you describe for us briefly the duties of a business agent in Local 14?

A Well,one of the main things, he would help negotiate agreements for Local 14 and 14-B; see that wages, proper wages are paid, proper conditions; see that the men are -- if they are short in their money, he has to correct it.

And also contractors may call the union office if they don't have enough men and ask us to get an operating engineer for them.

Q How frequently do contractors call the union to ask for men?

A They are in the office five days a week, five mornings. It is according to how busy it would be. Right at the present time you wouldn't get too many calls. If we are busy we get more.

Q Is there any difference between the duties of a business agent for Local 14 or for its branch, 14-B?

A No, sir.

Q Mr. Wade, is it fair to say that you go to the hall each day of the week?

A Yes, sir, every day.

Q For how long has that been your practice?

A Since 1953.

Q When you say the hall, to what are you referring?

A That is where the men come in the morning and

wait to see if there are any calls for extra men on the jobs or maybe give you a beef about being short in their pay.

Q How many business agents are there in Local 14 at the present time?

A Five.

Q Could you name them for us?

A Edward Broderick; John Messenger; John Stanton; Henry Walker; myself.

Q Have all of those gentlemen been business agents for a long time?

A No.

Q Which, if any, have not?

A Well, the longest one in there now besides myself would be Edward Broderick. I guess maybe 10 or 11 years, something like that. I am not exactly positive; close to that.

Q Who is the person with the least time as business agent?

A John Stanton.

Q When was he appointed or elected last?

A I guess about five or six months ago. It could be a little less. I am not positive.

Q Do you know the race of all the officers and

business agents of Local 14?

A The what?

Q The race of all of the officers and business agents.

A The officers get paid not for coming to meetings --

Q You didn't understand my question. Do you know the race of all of the officers and business agents of Local 14? By that I mean is it correct to say that all of the officers and business agents of Local 14 are white?

A Yes, they are.

Q What are the geographical or other jurisdictions of the different business agents of Local 14 or 14-B? Could you explain their differences, please?

A Well, myself -- the reason I am saying myself first is that I know the area that I cover well.

Here in Manhattan from 34th Street down to the Battery on heavy construction work. All of Brooklyn on heavy construction work. The Jersey waterfront on floating rigs, and any floating rigs that may work around Manhattan or Brooklyn also.

Q Mr. Wade, if I might interrupt, I would like you to restrict yourself to Local 14 work for the moment and not include 14-B and then reanswer the question, please.

A Well, I think these floating rigs have both 14 and 14-B men on them. Sometimes they are on work other than construction work but also they work on construction work.

Also I represent 14-B in the scrap yards in the five boroughs and some along the Jersey waterfront.

Q Do any of the other business agents represent Local 14-B?

A Well, when we negotiate, Broderick negotiates with me for 14-B. 14-B strictly would be scrap yards and in some cases maybe well drilling equipment. They have some stevedoring work on the waterfront in 14-B and 14.

Q Is it fair to say that most of the people in 14B are or have been organized into the union?

A Well, going back, yes, because some of these 14B men have been around a long time.

Q And have you personally done much as an organizer?

A Yes, sir.

Q Do most of the men in 14B work steadily for employers or do they move from job to job?

A They work steady, most of them.

Q You have said that you personally had much work involving heavy construction. Could you describe to the Court what you mean by "heavy construction"?

A Digging foundations for buildings, pile drivers, building docks, bridges, sewers, road work.

Q What particular pieces of equipment do you use in this heavy construction work?

A All kinds of cranes, pile drivers, shovels.

Q What types of equipment other than cranes have you used?

A Pile drivers, shovels, backhoes, draglines; in some cases derricks.

Also, these floating rigs are used on most of the dock work.

Q Would you describe for us what a dragline is?

A A dragline is a crane with a bucket that you pull in to load as opposed to a clam shell that drops down when you load it.

Q Is any hoisting done on a dragline?

A Yes, sir.

Q Will you describe to us what a floating rig is?

A Well, it is a very large crane on a barge. They are powered, some by steam, some by diesel.

Q Do your men work on rollers?

A Yes, sir.

Q Do your men work on compressors?

A Yes, sir.

Q Do your men work on welding machines?

A Yes, sir.

Q Do your men work on well drilling machines?

A I mentioned that, yes, sir.

Q Would you describe for us the type of work an individual in Local 14 does when he operates a roller?

A When they surface a new street or resurfacing an old one they roll the asphalt on.

Q How does one operate a backhoe?

A Backhoes are for trenching work. They dig trenches exclusively -- in some cases sewers, in some

cases for duct lines, utility lines.

Q How does one operate a compressor?

A You mean starting in the morning?

Q What does a Local 14 man do on a compressor?

A Well, he would come to work in the morning and check his oil, check the machine over thoroughly. If it needs grease, grease it; check his hoses. In some cases he would supply oil for the jack hammers that work; start the diesel engine up and check the fuel and the water, and all those things. Start the diesel engine and watch the air. They carry air from one hundred pounds to 125, 150 sometimes.

Q Does he generally do that in the morning, start up the compressor?

A Yes.

Q What does he do the rest of the day?

A He watches it. If an air hose breaks or something he shuts it off. He shuts it down at noontime. He will watch the radiator; check the oil.

Q How does one operate a welding machine?

A The same.

Q How does one operate a well drilling machine?

A Well, well drilling machines are just what the word implies. They usually have like an A frame --

some of them are on caterpillars. They have an A frame and a boring machine that goes down into the ground to get water, and it's a business by itself. It requires skilled handling.

Q If a roller is transported from one job site to another job site, is it necessary for a Local 14 man to be on the roller?

A We get paid for one way. If they are bringing the machine to the job from the yard we get paid. If it goes back to the yard we don't get paid.

Q How about if it is going from one job to another job?

A Well, if that would happen in the daytime it would be on the payroll anyhow.

Q To your knowledge do all members of Local 14 know how to operate hydraulic cranes?

A Well, I wouldn't say all of them, no, but our men tend to be specialists. Some men stay with certain types of equipment. There are some that can operate everything.

Q When you say some men are specialists, can you give us an example of the types of equipment that that individual would be likely to stay with for most of his career?

3 2am

A Well, some men might follow sewer work exclusively. He would be on backhoes, on cranes -- sometimes a dragline.

A man following building work would be on one of the high boom cranes, or maybe a hoist or a derrick on a building.

Q Do all members know how to operate hydraulic backhoes?

A Again, I say what I said before, they tend to specialize. Some may not.

Q Mr. Wade, approximately how many men are working for you in your jurisdiction at any one time on heavy construction?

MR. KENNEDY: Are we talking about 14 or 14B?

MR. GLASSMAN: I am talking about under Mr. Wade's personal jurisdiction, in 14.

A Just 14?

Q Yes.

A According to how conditions are. It could be a couple of hundred sometimes.

Q Well, when conditions are good what is the largest number of men you have had working in Local 14 for yourself?

A In my area?

Q Yes.

A When conditions are really good it could be more than 200. It could go on down.

Q What is the lowest number?

A Right now, for instance, I don't have many men working in my area -- not too many, except the scrap yards and the stevedore men.

Q When is the last time that you had about 200 people working for you personally?

A Maybe three or four months ago, five months maybe -- I am not positive.

Q Was there any time you can remember prior to three or four months ago in which you had almost no people working for you?

A How many?

Q Almost no people or as low as there is at the present time.

A Well, sometimes you get a slow period, like this week has been a slow period because some of the trades are off the jobs. There is two holidays this week, and a lot of people are away from the job so they don't -- not necessarily my people but a lot of people are away from the job so that they don't work the last week or so. It is a little slow on account of the

holidays, and in turn it would be very slow with us around Christmas and New Year's.

Q Mr. Wade, aside from the present slowdown and aside from holidays and such, is it fair to say that over the past ten years or so you have generally had about 200 people working for you?

A Give or take, ye .

Q About how many of those individuals would you say were specialists on certain kinds of equipment?

A I would say about three-quarters of them could specialize in some kind of equipment, and the rest may operate everything.

Q Could you give us an idea of those men who are specialists, approximately how many would be specialists on particular types of equipment, and give us the names of the equipment and the approximate number of men, please.

A I would say 100 or 150 out of the 200 would be specialists.

Q And on what specific pieces of equipment would you find most specialists?

A It's an odd thing to say but the men that can run everything are the best men, and they are the scarcest. In other words, you could take a man off a long boom

crane and put him on a backhoe, and then take him and put him on a steam rig or a dragline, or maybe a shovel. Those men are very scarce.

Q How many men would you say spend most of their time doing sewer work?

A Well, sewer work is a big -- it's a big thing here in the city because of ecology and everything -- it has been over the years. In my particular area I would say close to half the men -- half the ones that I have.

Q About how many men would you say specialize in backhoe work?

A Well, backhoe work is part of sewer work.

Q About how many people working for you at any one time would you estimate are on long boom cranes?

A Well, actually the long boom cranes, unless it is working on dock work, the long boom cranes on buildings I don't handle.

Q Are long boom cranes a specialty in the field?

A A what?

Q A specialty in the field.

A Well, it is one of those that the men seem to follow, like I say, the men specialize in. One group of men follow that particular type of work.

Q When you say they follow, are you --

A That is the kind of work, if they had their choice, they would rather be on. They are more skilled probably on that.

Q Do some men who work on long boom cranes stay on that for their entire career as much as possible?

A I guess they would as much as they could, but if you are in the city, right now long boom cranes are getting kind of scarce, so they have to go on something else.

Q When you say, "they are kind of scarce" , about how many would you say are operating in the city at the present time?

A Well, I couldn't put my finger on it because I don't handle uptown or areas of building work, but from riding around you can notice there aren't as many as there used to be.

Q When you say there aren't as many as there used to be, about how many was the most they have ever been?

A I would say 100.

Q And right now are there less than 50?

A I would say yes.

Q Could you briefly describe for us the difference between heavy construction equipment that your men use

as opposed to heavy construction equipment that Local 15 men operate?

A Well, Local 15 operates small backhoes, bull dozers.

Q And Local 14?

A Local 14 operate the backhoes that have two men on them, an oiler and an engineer; and some of them are cable. They hoist with cable, and some of them hoist hydraulically.

Q Are you talking about 14 equipment now or 15?

A 14.

rpl Wade-direct

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Q Are most of the backhoes operated in Local 14's jurisdiction hydraulic or cable?

A I would say partly of each. The hydraulic are the newer type machines. If you get a newer type machine, in many cases it is hydraulic.

Q Is there any particular kind of work on which the older machine is operated as opposed to the newer machine?

A I would say heavier work are cable-operated machines, backhoes in particular are huskier and heavier than most of the hydraulic machines that I have seen.

Q When you say on Local 14 equipment you need two men on the backhoe, one an oiler and an engineer, are both the oiler and engineer members of Local 14?

A No, sir.

Q Who is a member of Local 14 and what is the other man?

A The engineer is a member of Local 14.

Q The oiler is generally a member of another union?

A Yes, sir.

Q What union?

A 15.

Q What does the oiler do on that equipment?

A Well, he maintains the equipment, helps the

engineer in the adjustments, oils, signals, fuel.

Q When you say he signals, what do you mean?

A Sometimes the man is working where he can't see. He has to have a signal man, the oiler would be the signal man.

Q What type of signals does he give?

A Hand signals.

Q What kind of equipment requires signals?

A Cranes on a sewer job or any or any crane digging blind. If the engineer can't see where the bucket is or the load is, he must know by signals.

Q Aside from the Local 14 backhoes being larger than Local 15 backhoes and requiring two men rather than one to operate, are there any differences between the equipment?

A Well, usually the larger backhoes are full revolving machines and are on caterpillars -- not all of them -- some of the larger are on tires. But the basic difference is the full revolving and caterpillar mounted usually.

Q Are they all operated with various levers?

A Yes, sir.

Q Is there any other difference between other Local 14 equipment and other Local 15 equipment?

A The small rollers under 5 ton Local 15 handles.

Q And those over 5 tons?

A Local 14.

Q Is there a difference in the way a man technically has to operate a larger roller as opposed to a smaller roller?

A The larger rollers are used on street asphalt work, according to specifications of the City, and the weight of it will compact the asphalt better than the small roller.

The small roller would be used on asphalt sidewalks, walks or driveways where the compaction I assume is not so critical.

Q How many levers are there on a large roller?

A The levers on the large roller and the small roller are usually the same, one for travelling and one for steering, some for power, throttle.

Q Is there any particular equipment within Local 14's jurisdiction that is generally referred to as lighter equipment?

A Well, the lighter equipment you mentioned before, compressors and welding machines.

Q Why is it called lighter equipment?

A Physically it doesn't require so much effort to

operate.

Q Are there any particular members of Local 14 who generally receive work on lighter equipment?

A Usually the older men or disabled men.

Q Tell us what the difference is between cranes operated within Local 14's jurisdiction and cranes operated with Local 15's jurisdiction?

A Local 15 doesn't operate cranes.

Q Doesn't operate any cranes?

A No, they operate cherrypickers but not cranes.

Q The cherrypicker is a form of crane itself?

A They call them cherrypickers. I don't know why, but they do.

Q Are cranes ever used without hoisting or any operation that does not require hoisting?

A In my own opinion I would say no because everything you do with a crane is hoisting. If you pick up a bucket of dirt you have to hoist it, if you are loading a truck or putting it in a hopper maybe 50 or 60 feet high. The same with a dragline.

If the crane got a piledrive on it you are hoisting timber up 40, 50, 60 feet or driving H-beams.

Q Are there cranes used in excavation work?

A Yes, sir.

Q Could you describe the operation of a crane in excavation work?

A The crane in excavation has a big bucket on it, a various size from a half-yard to in some cases five or six yards; maybe more on big rigs.

You drop the bucket in the hole -- you have seen pictures possibly -- take the dirt out and load it on trucks, hoist it up. Others hoist up out of the hole maybe 15, 20, 10 feet, and on big buildings like in Foley Square across the street, they hoist all of the material out with cranes; hoist some of the material back in.

Q When a crane is used like that, is a 14 man assigned to the crane?

A Yes, sir.

Q Could you describe the type of equipment used by the 14-B men?

A The 14-B men, some of them operate the big floating rigs, among the largest we have.

Q How large are they?

A The biggest in the City, some of them the biggest in the world, Merritt-Chapman has big floating rigs they use to handle transformers or something. They handle very, very heavy loads. All floating rigs are large.

14-B men also operate cranes in scrap yards with

magnets on them hoisting steel, crushed steel. There are a few forklifts in the scrap yards,not many.

Q Do they operate any heavy equipment other than floating rigs and cranes in scrap yards?

A Forklifts, cranes, sometimes, a couple of the scrap yards have overhead travelling cranes, but it is still a crane.

Q Are there rollers or backhoes used in scrap yards?

A No.

Q Mr. Wade, do you know what heavy equipment, construction equipment, requires a license from the City of New York for its heavy operation?

A Well, the law sometimes differs according to who is reading the law. The license says on it hoisting equipment operator and from a reading of the license anything that is hoisted I would say requires a license.

Q Do cranes operated in a scrap yard require a license?

A They are on private property, not out on the street, so they don't seem to press the issue.

Q Who are you talking about when you say that they don't seem to press the issue?

A The License Department of the City of New York.

Q A license is not required on private property?

A Well, that is the only reason they ever gave for not requiring it, because it is on private property, it is not on the street where the public is.

Q Are the same type cranes used on private property in scrap yards as are used in other building construction work?

A Some of them are. Some are smaller and some are very, very big.

Q What are some of the bigger types used, of cranes used in scrap yards?

A Travelling gantry cranes; floating rigs working adjacent to a scrap yard and loading heavy loads out of the scrap yard with a floating machine.

Q About how many travelling gantry cranes are in scrap yards or being operated in scrap yards at the present time?

A One in Brooklyn, Kings Scrap, he has two of them.

Over in Jersey City, we have big overhead cranes, a couple of them. I would say maybe ten altogether, 12.

Q How many travelling gantry cranes are used out of scrap yards at the present time in the City of New York?

A We don't use them. The other one I know about is in the Brooklyn Navy Yard.

Q How big is the travelling gantry crane?

A 50, 75 ton they could be. The ones in the scrap yard the capacity is less than that.

Q Do the travelling gantry cranes have long booms?

A I would say 80 feet.

Q Mr. Wade, how do most people training on Local 14 equipment?

A Well, do you mean how do we get the people?

Q How does one learn how to operate Local 14 equipment?

A You want me to talk for myself or other people?

Q I am not interested in how you learned yourself, Mr. Wade, but how other engineers who are under your jurisdiction generally learn how to operate the equipment?

A Some of them learn on cranes, the engineer might teach him. Some of our people in Local 14-B might learn.

An engineer, if he would want to teach someone else, maybe an engineer would want to teach his son, he would take him to work with him if he is off from school or something.

Q If an engineer wants to take his son and teach him how to operate a crane or other heavy construction equipment, would he have to get permission to do it or how

Q Is there any expression in the trade for these

would he do it?

A Get permission off the man he is working for.

Q Do you mean on weekends or summers or what when you say off from school?

A Yes, just what you said, unless he is that old. A lot of people on account of the draft, quite a few of our people got a lot of experience in the Service.

Q What kind of experience have they gotten in the Service, if you know?

A Well, I know personally about four sons in the Service. I taught them before they went into the Service and they were in the Service, three of them operated heavy equipment, one of them got a tank.

Q During what period of time were your sons in the Service?

A Two during the Korean war and shortly after the Korean War was over, the other two went in, all in practically the same time.

Q What kind of equipment did they operate in the Service?

A Two of them were in Germany for three years and in an engineering outfit and they gave them the opportunity because they could operate equipment before they went in the Service, they needed men and operated equipment in

Germany.

One of them, the only heavy equipment he got on, he could run heavy equipment and they put him on a tank. Maybe they figured that is heavy equipment, but they made him a tank operator.

Q Was that experience of any use to him when he came back to the States?

A I don't think it helped him much.

Q Was the experience of your other sons in the Army Engineers of any use to them when they got back?

A Yes, I think it was. They gave them a discharge giving a recommendation that helped them possibly. It would help them to getthe license in the City of New York.

Q In what way would it help them to get their license?

A Because the discharge shows what they were doing in the Service and what they have done before they went in the Service, whatever.

Q If someone had a discharge from the Army showing the equipment theyoperated, what would they do with those papers to help them get the license?

A That is part of your -- when you go to the City of New York, you have to tell them how you got experience

in order to take a test, so they usually accept something like that for their written test and the practical test, find out whether it is right or not.

Q In other words, is it correct that you are saying the Army experience is counted by the City as useful experience on heavy equipment?

A Is what?

Q Is counted by the City?

A They would look on it favorably, I think, yes.

Q Mr. Wade, you earlier said that operators may learn while being helpers. Could you describe for us how one becomes a helper?

A I had four sons and one of them were ever helpers.

Q Other members of Local 14, were they formerly helpers?

A Some of them that I do know, yes.

Q Do you know how they became helpers?

A You know, everything that you ask me like this question in particular is just hearsay, so I can't say. It is only what I heard, so it is not actual.

Q Do you know what a helper's duties are?

A Well, as I explained before, he would have to help the engineer maintain the machine, adjust it and grease it, oil; help the engineer check the cable, give

signals. I know this because I run machines myself.

Q Is the helper a Local 15 man?

A Yes.

Q Are all helpers generally 15 men?

A Yes.

Q Do oilers on cranes learn how to operate cranes ever?

A If the oiler is interested and the engineer is willing and the boss of the job consents that he can teach him, the engineer in many cases teaches him.

Q How does the engineer teach an oiler how to operate a crane?

A The oiler is standing behind him quite often seeing everything the engineer does.

When he isn't busy, at noontime or in spare time, he might let the oiler in the seat and work with a slow throttle, similar to teaching someone to drive a truck or something. The best way is on the seat a lot of time and experience.

Q Does the union encourage engineers to show their oilers how to operate?

MR. KENNEDY: Which union?

Q Local 14.

A Do you mean officially? No. They never tell them,

they don't say you teach this guy or don't teach this one. They don't tell them one way or the other.

Q There is no official policy on that?

A No, it is up to the engineer himself.

THE COURT: We will take a short recess.

(Recess.)

MR. GLASSMAN: May I continue, your Honor?

THE COURT: Yes.

BY MR. GLASSMAN:

Q Mr. Wade, I believe before the break we were talking about oilers obtaining experience in the running of cranes, and I believe we asked you whether there was any policy of Local 14 in that regard, and the answer was, "No", is that correct?

A Yes -- official policy.

Q Mr. Wade, is there any unofficial policy or practice as to oilers getting experience on cranes?

A Like I said before, an engineer, if he had an oiler that might be inclined to learn or wanted to learn, and he had an opportunity -- I am talking about on the job -- if he isn't too busy or something or at noontime, he might teach him.

Q Is there any rule of thumb about how many hours a day an engineer might let an oiler operate or learn to operate?

A I don't think so, because job conditions -- on some jobs he may not be able to let him run at all. Some contractors if they see anybody excepting the engineer running the machine, wouldn't let him.

Q That would depend on the particular type of

equipment or the particular job?

A The job he is doing usually.

Q And on what types of job might he have more difficulty in obtaining that kind of experience?

A Well, if it is high setting steel up in the air, and men hooking steel up, he wouldn't want anybody except the engineer on the machine.

Q Why is that?

A Safety.

Q At any one time about how many engineers are working on hoisting steel up in the air?

A When building work is busy. At one time we had -- when we were putting a bridge up, the Narrows Bridge, the Brooklyn-Queens Expressway -- when they were making that bigger -- quite a few engineers would be hoisting steel. Right at the present time there is very few iron workers working, so we are not hoisting very much.

Q So at the time when business was really good and the bridge was being built, about how many were doing it at that time?

A Maybe 150 all over the five boroughs.

Q And about how many are hoisting steel now?

A I don't know of any.

Q Aside from the peak time, such as when that bridge was being built, what is the approximate, usual number hoisting steel?

A I couldn't say exactly. I couldn't pinpoint it because I wouldn't want to be wrong; but right at the present time I don't know of any setting steel.

The last big job we had was this telephone building right close here.

Q Back about a year ago, about how many men were hoisting steel?

A Maybe 10, 12.

Q How does a man learn how to hoist steel?

A Watching the operator, and maybe hoist steel on the ground where you do not have to pull it too high.

Q How would he get the opportunity to hoist steel on the ground?

A Well, if they were picking it up or taking it off a truck and putting it on the ground when the truck delivers it, many times they put it on the ground first, and some engineers might bring their oiler in with what we call shaking out -- shaking the steel out. That means separating it and getting it ready for the erection.

Q How do you get it ready for the erection?

A Well, the pieces that have to go up first

have to be most accessible. You put it around where it belongs. They call it shaking it out -- unloading it off the truck and placing it where it is supposed to be on a big job.

On a small job it might come in on a truck and put up in place.

Q Do you use a crane to erect it?

A Yes -- you don't erect it -- you shake it out. You store it temporarily.

Q And if an individual wanted to get experience shaking it out and learn how to lift steel with a crane, if he wanted to do that, how would he go about getting this experience?

A Well, if he had operated a crane before doing something else, and he knew how to handle the machine, the engineer might give him the opportunity to do it once in awhile.

Q And if he had not operated the crane before?

A I don't think the engineer would let him.

Q Is it up to the individual engineer, then, in that case?

A I would say yes.

Q Mr. Wade, are all persons working within Local 14's jurisdiction members of Local 14?

A Not in all cases, no.

Q Would you say most of the people working in Local 14's jurisdiction are union men?

A Yes.

Q Do you have any estimate from your experience as to the approximate percentage of people in Local 14's jurisdiction who are members of the union?

A Of my union?

Q Yes.

A Would you include retired members or working people, people that are working?

Q The percentage first of working people. Of those --

A I don't think there's any more than between 11 and 1,200 at the most, working.

Q Perhaps I did not quite understand your answer. Is it correct that you are saying that there are about 11 or 1,200 working under Local 14's jurisdiction at the present time?

A I would say yes, sir.

5.2 am

Q And approximately how many individuals are working in Local 14's jurisdiction when the work is steady and good?

A It could be -- you mean counting other people,

other than 14, is that what you mean?

Q Yes.

A It could be another 75, or maybe 100 -- could be.

Q About how many of those men are members of the union?

A Members of other unions?

Q No, members of Local 14.

A Well, I don't understand your question.

Q Let me rephrase the question --

MR. KENNEDY: Your Honor, I believe he testified there were 1,100 - 14 men working in his jurisdiction,and I think he was defining that as 14 men who worked within the jurisdiction.

THE COURT: Is that Local 14 men or number 14?

MR. KENNEDY: No, Local 14.

Q Let me rephrase the question, Mr. Wade, so that there is no confusion.

About how many members of Local 14 are working at any one time, approximately?

A Eleven or twelve hundred.

Q And about how many men are working within the geographical and trade jurisdiction of Local 14 at any one time who are non-union members?

A They might be members of other local unions

working in our area on our work -- is that what you mean?

Q About how many such individuals could that be?

A It could be 75 -- between 75 and 100 when we are very busy.

Q And what locals would they be members of?

A They may come from Local 137, 138, 825 -- surrounding locals.

Q Are they surrounding Operating Engineers?

A Yes.

Q Could you give us the location of each of those locals?

A 825 is in New Jersey.

Q Where is 137?

A Westchester and part of equipment.

Q And 138?

A Nassau and Suffolk.

Q Are there any individuals that you know of who work within Local 14's geographic and trade jurisdiction who are neither members of Local 14 nor members of Locals 137, 138 or 825?

A There could be a few.

Q Would you explain how those individuals would get their jobs?

A Well, if they came into the union hall and

saw some of the delegates or all the delegates, and some of them may come in and tell us they have a New York City license and that they are experienced but they don't belong to the union, and they could operate certain types of equipment, it's possible, if we are busy, we will put them to work.

Also, on some types of equipment where licenses are required, people come to us and tell us that they are experienced in operating, and we might put them to work. If we needed men, we would.

Q What type of equipment would that be?

A Could be locomotives, mucking machines; some of the hydraulic hoists where they are not so particular about the license.

Q About how many of those people would there be at any one time?

A Again, I would say between 75 and 100.

Q Is that in good times or bad times?

A Good times.

Q And does that vary, depending on the employment conditions?

A Yes, it would. If work is slow it shouldn't be so many.

Q If a man comes into the hall who is not a

member of Local 14 or any of the sister locals, how does Local 14 determine whether or not the individual should be given work at that time?

A Like I said, he explains to us that he has equipment experience in certain types of equipment. If he says he can run it, in some cases you will send him to the job and the master mechanic or somebody on the job, or the engineer on the job might see if he can run it.

Q Then if he can run the equipment, they would let him on the job?

A Yes, sir.

Q Would the master mechanic generally test him out or would the contractor have the final say?

A It is according to the size of the job. In some cases, only the big jobs have master mechanics on them. One of our engineers, or an engineer on the job, on a smaller job may send him to a certain engineer, on the same job where he is going to go to work -- maybe they need an engineer on Tuesday on a certain type of equipment, so you send the man out there on Monday and see if he can run it.

Q The master mechanic is a local 14 man, is he not?

A Yes.

Q Is there any expression in the trade for these non-union people who work on the job?

A Any what?

Q Any expression in the trade, what they are called.

A Depression?

Q Any expression -- any word that describes these men.

A Well, other people call them that; we don't. I know the word you are thinking of, but we don't usually call them that. You are talking about a permit man. That means without a book.

Q Do you have any other name that you call these people?

A No.

Q Do you keep any list of those people who are working without a union book?

A Well, usually when you send any engineer out to a job you mark the job, the location and the man you send, no matter whether he's an engineer or permit man or not -- you mark down the man you send out.

If you get a complaint on any of the men you send out, you would know right away. If the boss doesn't know his name, you know who it would be. But

any man you send out you keep a record of -- usually a rough record. You don't keep an official record in the office; you keep like a little pad with the date, the location and the day you send them out.

Q Are Local 14 men ever challenged on the job?

A Are they challenged? Do you mean if a guy would ask him for a book?

Q Yes.

A I suppose a guy could -- anybody can challenge a man. You can say "Do you have a book"? They will ask you, "Do you have a book"? If that is what you mean by the word, "challenge", I assume it means, "Do you have a book"?

Q Would a Local 14 man ever challenge a non-union man?

A It's possible.

Q If he did, what would happen after he challenged him if he did not have a book?

A He might ask him if he had a book and he says, "No", and if he says, "No", "Did the delegate send you on the job?" He would verify it, that is all.

Q If he wanted to verify it, he could verify it by calling the delegate?

A Yes.

Q Does Local 14 keep a list of those individuals who are members of other sister locals who are working within Local 14's jurisdiction?

A The individual delegate would. The local officially wouldn't, but the individual delegate, if you want me to explain how they come in, a guy from another local.

Q If you would, without being a member of Local 14, how does an individual member from another local obtain work in Local 14's jurisdiction?

5.3am

A Well, I can tell it to you in reverse.

If I wanted a -- if one of my men is working for a company that has a job in Nassau County, I would call up the union in Nassau County and tell the location and where my man is going, and the crew and how many days he is going to be there, and ask his permission for the man to work there; and they do the same thing -- they would call up and say, "We are sending a crane into the city." They would give us the location and tell us how long he is going to work there, and if there are no problems on the job, if we don't have big unemployment we would go along.

Q Do you usually get these calls from another local or would you get them from the individual who wants

to be employed in your jurisdiction?

A Another local.

Q Does Local 14 issue any kind of permit of any sort for its members trying to seek work in another local's jurisdiction?

A No, sir.

T6

Q If an individual who is not a member of Local 14 seeks work in Local 14's jurisdiction, is he ever sent out on Local 14-B work?

A On occasions, yes. Usually because we get a call from the boss -- talking about a scrap yard, are you?

Q Yes.

A The boss calls up from the scrap yard, says he needs another engineer for a day or a week or whatever, and if I have a man that can run -- if all of our men are working in that yard and we don't have any scrap people available, we tell him okay.

Q You check to see if he has a license in that case?

A In the yard they don't need a license.

Q Mr. Wade, do you know if there is any formal apprentice program in Local 14?

A No, sir, there is not.

Q Do you know if Local 14 ever made any efforts to establish one?

A No, sir, we never did.

Q Do you know if any of the contractors have ever requested an apprentice program?

MR. KENNEDY: During collective bargaining?

Q During collective bargaining agreements or at

any other time, do you know if contractors ever requested it?

A Not to us, because all of our people are journeymen.

Q When you say all of your men are journeymen, what do you mean?

A Well, I think I know what you are talking about. For instance, a carpenter is a journeyman, he has a helper. A plumber is a journeyman, he has a helper. We have engineers, we don't have any helpers. In my union I am talking about.

Q Is there any reason why Local 14 that you know of cannot have an apprentice program?

A Because we don't have an apprentice -- some charters of the International issue a charter and you are allowed to have apprentices. We don't have an apprentice charter.

Q Does any other local that you know in New York have an apprentice charter?

A Hearsay they do, yes.

Q Do you know which --

MR. KENNEDY: Objection.

THE COURT: Sustained. He said it is hearsay.

Q Mr. Wade, do you know if Local 14 operates under the same International constitution as Local 15?

A Yes, sir.

Q Does it?

A Yes, sir.

Q Are you familiar with that constitution?

A Yes, sir.

Q Do you know if there is a provision in that constitution relating to a requirement for apprentice programs?

MR. KENNEDY: The document speaks for itself.

THE COURT: Yes, but I will let him answer. I agree with you, but he can answer that.

MR. GLASSMAN: If Mr. Wade is familiar with that.

A Only if the union involved has a journeyman and an apprentice charter, which we don't have.

Q Do you know the circumstances under which Local 14 received a separate charter from Local 15?

A It was before my time, but you would have to go back into Local 184 and 403 and 125 when that occurred, and that occurred before I was an engineer.

Q Do you know if Local 14 has ever requested an apprentice charter?

A I don't think so.

Q Have they ever requested an apprentice charter during your years in the union?

A No, sir.

Q Mr. Wade, do you know what licenses are required by the City of New York?

A Yes, sir.

Q What pieces of equipment require a license?

A Hoisting equipment, all hoisting equipment and high-pressure boilers or equipment operated by steam.

Q Are there different kinds of licenses for hoisting equipment?

A Yes, sir.

Q Could you describe them for us briefly?

A Basically there is a hoisting machine license. That is a license to operate any piece of equipment that is hoisting with the exception of a machine would have a boom in excess of 200 feet. That is one.

Then there is a hoisting machine license exceeding 200 feet. That is a hoisting machine with a B stamped on it.

Then there is a portable steam license and then there is a cherrypicker license. That is four.

Q Does that have a stamp on it?

A Sometimes there is one license with two things stamped on them, like portable steam and hoisting. The man may have taken the test on both and he has both.

Q Does the cherrypicker license have another name to it, is that a C license?

A What?

Q Is that called a C license as well as a cherry-picker license?

A C license, yes.

Q Do you know if the types of licenses issued by the City of New York have ever changed during your period of years in the union?

A Yes. Years ago they had one, portable steam. Then in the late 1920's I think it was -- I wasn't around then, not in business anyhow -- they had what they call any motive power except steam, that is the license they call the hoisting license.

Q Do you know when the A, B, C licenses came into effect?

A Well, when the City started to make their licenses different, I guess they used that to denote the difference between the licenses. The first thing put out was the B license, that would be the boom in excess of 200 feet.

At the time we were attempting to limit booms to 200 feet, but the License Department wouldn't go along with us.

Q Why were you attempting to limit the booms to 200 feet?

A We felt they were unsafe. Personally I am the safety director in the union and I felt they were unsafe, but we were overruled by the City.

Q Are there frequently accidents with large boom cranes?

A Well, I don't know if in excess -- there are enough of them.

Q Do you or any other officers of the union generally inform the membership of accidents as they occur and precautions that should be taken?

A I check out -- one of my jobs is to check out every accident involving an engineer and make a report on it, report at the union meetings.

In many cases I have gone to court on it. I was in court a week ago on an accident that happened in 1962, in Jamaica, Long Island.

Q What are the causes of some of the accidents?

A Well, sometimes you will see when there is a number of accidents, you see a lot of noise in the papers about it, but usually the cause of accidents on equipment are the same reasons that you have accidents with automobiles, the numbers.

When we are very, very busy and have an awful lot of equipment operating, you have more accidents. When there is not so many, so much equipment operating, you don't have so many accidents.

Q Mr. Wade, when the City of New York changed the name and types of licenses that it issued and started issuing the A, B and C licenses, were members of the union at that time allowed to trade in their other licenses to obtain the new type license?

A Yes, they come under the grandfather clause if they can show proof of having operated the equipment involved.

2 Q Would they have to show any proof of the length of the booms they had operated?

A Yes, sir.

Q How about a man that had operated under 200-foot booms, would he have to tell the City how long a boom he had in fact operated?

A Well, booms under 200 feet comes under the original license, so that at that time it wouldn't count. If he operated booms 200 feet and over, then he had affidavits for it from the companies, different companies he may have worked for over a period of time, they would accept this and issue him a C license.

Q How often is the test given for a license?

A Do you mean the hoisting license?

Q Yes.

A Normally the hoisting license, usually twice a year.

Q Who gives the test?

A The Civil Service Department.

Q Of the City of New York?

A The City of New York checks out all the information but the Civil Service Department gives the test separate from the Building Department.

Q Where is the test given?

A Different schools. They select the site of the school and the man must have made an application and pictures, affidavits, proof of experience.

Q Is the test written or practical?

A Written, the first half of it.

Q And if he passes the written test --

A Then he can take the practical.

Q Does an individual have to bring his own equipment to take the test?

A No, the City has equipment in one of their asphalt plants out in Flushing.

Q All types of equipment?

A No, they don't have any long boom cranes.

Q How does an individual take a test on a long boom crane?

A They just had the first one about two months ago. They used a contractor's crane on a Saturday out in a big disposal plant job in Brooklyn.

Q What did they do before that on long boom cranes?

A Just like I explained to you, if he had affidavits that he had run equipment from a contractor --

Q There was no particular test?

A They come under the grandfather clause originally.

Q Are the inspectors who give the tests qualified engineers?

A They are all licensed engineers.

Q Are they usually members of Local 14?

A No, sir. Usually -- talking about what kind of crane? Are you talking about a crane or the man that writes the questions?

Q Talking about the man who actually tests out in practice or gives the practical test to the prospective licensee.

A With everyone of the candidates there is a licensed engineer there, but he is not the man giving the

test.

Q What does the licensed man do on the side?

A Do you mean the engineer that is there?

Q Yes.

A He gets off the seat and lets the man who is going to take the test become the operator.

Q Is that man usually a Local 14 member?

A The engineer on the -- yes, but he isn't the same member working on the construction work. He is a Civil Service engineer and the majority of them are our people, not all but the majority of the Civil Service engineers like there is an asphalt plant and we have Civil Service and the Sanitation, Marine and Aviation on rollers, they all work for the City. Not all of them belong to us but I would say most of them do, to our union.

Q Going back prior to the A, B, C licenses, were the inspectors ever 14 men before that?

A Inspectors that gave the test?

Q Giving the test or the AMPES license.

A No, the inspector, the engineer on the crane, the man giving the test is not an engineer.

THE COURT: The man giving the test, is he a member of Local 14?

THE WITNESS: No, sir.

Q Do you know what background the man giving the test has?

A Usually they are a professor or something giving these tests, some college professor.

Q Do you know how he can tell whether the man is qualified and can run the equipment properly?

A I guess he goes by the answers, there are a lot of questions they give besides physically operating, and watching him.

Q Do you know how he can tell whether the man is practically --

MR. KENNEDY: I object to this line of questioning as it calls for speculation as to how the City engineer gets to know these things.

MR. GLASSMAN: The witness indicated he doesn't know.

A Usually they are college professors that give the test. I don't know how.

Q Mr. Wade, do you have to be a citizen to obtain a license from the City of New York?

A Not in the later years you don't.

Q You say not in the later years. Did you used to have to be a citizen?

A Yes.

Q When did that change?

A The City changed, the first time we knew about it I would say is maybe 12 or 14 years ago. A man came with a license that wasn't a citizen. That is when we found out about it. He told us he wasn't a citizen but had a license.

Q About 12 or 14 years ago?

A I think -- you can't hold me to it, but I think somewhere in that neighborhood.

Q Whatever time it was, prior to the time that you found out that a man did not have to be a citizen to obtain his license, what did the union tell an individual if he came to the union and said, "I can operate a crane and I would like to be a member but I am not a citizen"? What did the union say?

A If he didn't have a license?

Q Right.

MR. KENNEDY: First of all, I would like to check if that situation ever occurred or not and then I think the question is proper.

MR. GLASSMAN: I am willing to ask that question.

Q Is there any time in your experience where an individual came to the union who did not have a license and wanted work?

A Yes. The man you were talking about, the permit man that you referred to before.

Q Did any of these individuals without a license, your permit men, were any of these men non-citizens?

A I wouldn't know because it is possible, but I don't know for sure. I can't say. I didn't see -- they didn't show me anything, I didn't ask him.

Q If a man came to the union who did not have a license would the union ever tell me what the requirements for the license were?

A Many times we do, yes, sir. Give him the address where to go, where to file for it and everything.

Q If the man had a foreign accent, would you ever ask him if he was a citizen?

A It is hard to say. I may have personally, but the union doesn't make a habit of doing that.

Q You have done that personally?

A I may have done it personally myself.

Q If the person told you he was not a citizen, what would you tell him about how he might obtain work?

A Well, knowing that he can get the license -- do you mean about the license?

Q If he was not a citizen.

A As far as work is concerned, it doesn't make any

difference. He is no different than anyone else. But the license,I would tell him how to get the license and give him the address and send him over, it used to be on Duane Street and Broadway. Now they are over here just south of the Brooklyn Bridge.

Q You never told an individual that he had to have a license to work in Local 14?

A We tell an individual he has to have a license to be a member of 14.

Q But have you ever told an individual he had to have a license to work in Local 14's jurisdiction?

A No.

Q After the citizenship requirements change with the City of New York, did Local 14's admission practices or employment practices ever change?

A No.

Q How does an individual who can operate hoisting equipment but does not yet have a license prepare for a test?

A Well, a good way is to go to Delehanty's.

Q What is Delahanty's?

A Well, Delahanty teaches all -- they teach you how to be a policeman, they teach you how to be a plumber or any tradesman. They teach you everything, and they are very good at it. There are books on our business -- the Engineers' Handbook, I think they call it. They have all kinds.

Q Do you know if Delahanty has a formal course for operating engineers specifically?

A I don't know of any of our people who ever went to it but I know they do.

Q Do you know if they get any practical training as well as manual training?

A I don't know, I don't know.

Q Have you ever referred an individual to Delahanty to get training?

A Well, sometimes people came and asked us about their written examinations and everything -- they have a good reputation and so we do -- I would say personally I would. Now I can't talk -- I am not saying for my union, but personally I would say for past written examinations that is a good place to go.

Q How does a man get help in preparing for the practical city examination?

14B you don't need one.

A Well, he would have to have some engineer teach him.

THE COURT: I think we are going back into an area that we have been over several times -- about somebody getting practical experience.

MR. GLASSMAN: Your Honor, I want to find out if there is any specific assistance given to persons to take a test.

Q Mr. Wade, does the union ever help individuals specifically prepare for the practical portion of the City test?

A They might send -- a man, if a man has passed the written -- is that what you are talking about, the written test?

Q Either before or after.

A In other words, if he has passed the written, he wants the experience for the practical?

Q Yes.

A We might send him -- if he knows an engineer that he is talking to.

Q Does the Union have any group training facilities that it operates?

A Yes.

Q Well, do they ever send an individual to the

training school before he has a license, to help him prepare for it?

A Actually the school is meant for members -- our school is meant for members. I wouldn't send anybody there unless he was a member -- 14B or 14.

Q Well, if a man is in 14B but does not have a license, might he be sent to the school to obtain a license?

A Yes.

Q If a man is on permit in 14's jurisdiction but he would like to take the City test, might the union send him to retraining school to get brush-up experience?

A I guess it's possible, but to my knowledge I don't know of any particular one that has gone there. There may have been some.

Q Mr. Wade, when did the union start its re-training facility?

A I would say it would be five years ago.

Q How is the facility paid for?

A The men themselves pay for it. There is a re-training -- there is a dues check-off -- and a small amount of it is for re-training.

Q You say a dues check-off. Are these dues

deducted from or paid in by members as well as non-union members who are in Local 14's jurisdiction?

A Well, we have two kinds of dues. We have a book. You go in and pay your dues and they stamp your book, $10 a month; $5 a month for the 14B men in the scrap yards.

Then we have a dues check-off. If the non-members don't have books, they don't pay dues the same as a book man. A book man pays more dues.

Q Does a non-union man have anything deducted for training or re-training, if you know?

A He signs a dues check-off card before he goes to work, giving us permission to accept dues for him, from the contractor.

Q Is a portion of those dues then earmarked for the training facility?

A I think a cent or two cents, something like that.

Q Mr. Wade, do you know how many people are presently in Local 14's re-training school?

A I don't have anything to do with the school. I wouldn't know.

Q Do you know where it is located?

A Yes, sir.

Q Where?

A On Leffert's Boulevard just south of South Conduit Boulevard, on the edge of Kennedy Airport.

Q Do you know if that has the same pieces of equipment as Local 15 has in its training school?

A Yes, I do.

Q Do you know if they are physically separated or used by the schools?

A The equipment is separated. Local 15 people have all the equipment that they operate there, or some of it; and we have some of the equipment that we operate on, and it is separated.

7.2am Q Do you know what pieces of equipment Local 14 maintains out there?

A Yes.

Q Would you tell us what they are?

A They have a backhoe.

Q Hydraulic backhoe?

A Backhoe.

Q Is that hydraulic?

A Cable.

Q Cable.

A Crane, derrick.

Q What kind of crane?

A The crane is a Northwest.

Q How big a crane is that?

A I think it is a one-yard machine.

Q About how many tons in weight is that?

A A one-yard machine could possibly be rated at 35 or 40 tons.

Q And how long a boom would they operate out at the airport?

A Forty or fifty feet.

Q Do you know if they teach people to dig with a crane at the airport?

A We have digging buckets on the crane, yes, and a dragline bucket, too.

Q Do you know if there any minorities of the union who are being re-trained at the present time?

A Some of them go out there. I think there are about --

Q Do you know how many that would be?

A No, I couldn't say how many.

Q Do you know who in the union would have the most knowledge about that?

A The only one is the engineer that is out there on the site physically when it is in operation. I wouldn't say -- possibly right now it would be a man named Preston.

Q What is his first name?

A It skips me.

Q Does the union frequently change the individual engineer who is out there at the school teaching other people?

A Well, they have different operators that may go out and teach. Preston is an engineer that works, but he is there on Saturdays and he has several other engineers on different types of equipment -- crane, et cetera. He has only been there a short while.

Q Do you know how many engineers are teaching other people at any one time ?

A I would say three-- three or four.

Q And is it proper to say that the school meets on Saturdays only?

A That is all -- Saturdays.

Q Mr. Wade, do you know who the trustees of the training fund are?

A Well, they don't call it a training fund. We don't have any separate training fund as such -- I don't think we do.

MR. GLASSMAN: May I have the Court's indulgency for a moment.

[Mr. Glassman examines.]

Q Mr. Wade, are you familiar with Local 14's bylaws -- excuse me, are you familiar with the collective bargaining agreement between Local 14 and members of the General Contractors Association of New York?

A Yes, I am.

Q Are you familiar with the provisions there which relate to apprentice and training fund contributions?

A Yes, but they mention 14 and 15 in that thing, do they not?

Q Let me show you Plaintiffs' Exhibit 40E in evidence, Mr. Wade. [Handing.]

A [After examining.] What page?

THE COURT: Any particular page?

MR. GLASSMAN: I would like to refer him to the exhibit as a whole at this time.

A You see, it says 15 and 15A?

Q That is an agreement between the members of the General Contractors Association of New York and Locals 14, 15 and 15A?

A Yes, sir.

MR. GLASSMAN: May I have the Court's indulgence for one moment?

[Mr. Glassman examines.]

A You are referring to Page 40?

Q Referring to Page 40, Mr. Wade, Section 6 entitled, "Apprentice and Training Fund Contribution."

A Yes.

Q And referring you to sub part "(a) Local 14", are you familiar with that provision?

A Yes, sir.

Q Does it make reference to a training fund and trustees of a training fund?

A Yes.

Q Do you know who those trustees are for the Local 14 portion of the training fund?

A One of them is myself.

Q Do you know who the other ones are?

A I think the other one is Thomas Nolan.

Q Who is he?

A Business manager.

Q Of Local 14?

A Yes.

Q Do you know if there are any employer trustees?

A Yes.

Q Do you know who they are?

A One of them that I know who comes frequently to our meetings is Mr. Gillis. He is working for one of our contractors.

Q Do you know what contractor he works for?

A Offhand, no, I don't.

Q Do you know how often the trustees meet?

A The trustees -- it has no specific time but maybe every couple of months, or if something comes up.

Q What are the functions of the trustee?

A Well, to see that the money collected is taken care of properly, I guess that is the main thing -- because this fund is tied in with our annuity and vacation.

Q Do you know makes the decision as to the type of training to be offered in Local 14?

A Ours is only a re-training school. We keep our men -- men that become too much specialists, too much to one machine, we try to get them on other machines.

Like I mentioned to you before, how the men attend to become specialists; in other words, we want them to be more ambidextrous -- I guess that might be the word.

Q How does an individual get into the school?

A Possibly he gets recommended. He comes up and says, "I want to go out to the school", and he would bring his book with him -- union book in 14 or 14B.

Q Is there a waiting list at the school?

A I think there is. I wouldn't know offhand

how long it is but I think there is.

Q Could you produce that for us later on today or tomorrow?

MR. KENNEDY: Produce what?

MR. GLASSMAN: A waiting list for Local 14's school.

MR. KENNEDY: If there is one, yes, sir.

BY MR. GLASSMAN:

Q Do you know who owns the equipment that is at the Local 14 re-training school?

A We do.

Q Mr. Wade, what are the membership requirements for Local 14, if you know?

A Number One is a license.

Q What kind of license?

A The basic license is a hoisting license -- that is required.

Q Is there any other requirements?

A Being able to operate at least three pieces of major equipment.

Q What do you call a piece of major equipment?

A Crane, pile driver, derrick.

Q Would a backhoe be a major piece of equipment?

A The big ones are, yes.

Q Mr. Wade, are you familiar again with the International Union constitution membership provisions?

A Yes.

Q Do you know if there is any provision in the International Union Constitution requiring a local license of any sort for membership?

A No, because different states don't require a license. Out in the boondocks you don't need anything.

Q Are there any other requirements for union membership?

A Well, he is supposed to be able to operate equipment -- like I said before, have experience, be experienced on the equipment; prove your experience.

Q Is there any particular amount of experience a man must have prior to becoming a member?

A Well, we try to keep it around 200 -- 200 days' experience.

Q You say you try to keep that. How do you try to keep 200 days?

A That's our rule-of-thumb. It's -- you are supposed to have at least 200 days of experience operating equipment.

Q You say your rule-of-thumb.

A I think it was in our bylaws at one time. I

equipment?

don't know if it is still in there.

Q On what occasions do you require the 200 days of experience, and in what situations do you not require it?

A Well, they are supposed to have 200 days of experience operating the various types of equipment. It should be major equipment.

7.3am

Q Going back to your definition of major equipment, are rollers considered major equipment?

A In some cases they would be. If you were putting in a new road and they are very, very particular about new roads, you asphalt -- I am not talking about patching city streets, but if you are putting in a new road and you have to have top men to roll the asphalt, good experienced men. In other words, if a man gets on a big roller on a new job and he steers the wheel too sharply, it cuts into the asphalt right away.

I would say a big roller on a new job is major equipment.

Q How about large front-end loaders?

A We don't have that.

Q How do you tell if a man had the proper experience?

A I told you before, that we might send him to

the job, send him out to the engineer or master mechanic, let him get up on the equipment and see if he can run it.

Q How do you tell that he has had the 200 days of experience? Do you ask him or does he file an application?

A Sometimes you can prove it easy by the pay slips.

Q Do you always ask an individual for his pay slips?

A No.

Q When do you ask an individual for pay slips?

A Well, he may say he worked out of town or out of the country someplace and maybe he wouldn't be able to get pay slips.

Some of the people may have gotten a lot of experience in the Service someplace -- the Sea Bees -- a lot of our people worked for the Sea Bees.

Q What kind of experience does an individual get in the Sea Bees?

A Any kind of construction equipment that you have the Sea Bees have it.

Q Is that up to date equipment in the Sea Bees?

A Usually,it's pretty good.

Q Do they have cranes?

A Yes.

Q Do they have large cranes?

A Floating cranes.

Q If a man has had experience in the Sea Bees, would that be counted towards his 200 days of experience?

A I would say yes.

Q If an individual comes to the union and has his license and says he can operate pretty well, would you put him up on a crane and try out the man, and if he does well, have you ever waived the 200 days' experience requirement?

A It's possible, yes.

Q What would that depend on if you waive it?

A His ability. He can probably prove part of it. Maybe he didn't have any proof of the latter part or the first part of the experience.

Q If an individual came to the union and he said, "I am a very qualified man on rollers, large rollers, and I am a very qualified man on large backhoes, cable, hydraulic, and I can operate some of the smaller cranes but I don't have a license," would you give him any advice as to how he could become a member of the union?

A Number One, he should get a license.

Q You would have to have a license in all cases?

A To come into 14 you have to have a license.

14B you don't need one.

Q If an individual came in with the qualifications I have just described, would you recommend that he go into Local 14B?

A There is nothing wrong with him going into Local 14B if there was work for him there.

Q Is it a practice of the union to recommend such an individual for membership in Local 14B?

A Not necessarily, unless we have work for him.

Q Is there any educational requirement to be an operating engineer?

A Well, in order to get that license you would probably have to read and write.

Q Can an individual transfer into Local 14 from any other unions?

A Yes, sir.

Q How does he do it?

A He gets a transfer card -- a withdrawal card from his own union, no matter where it may be, and he can deposit it in any other place in the United States.

Q What does that transfer card entitle you to?

A Nothing.

Q What do you do with it?

A You deposit it into the local where you want to go.

Q What does the local --

A Then you would go before the examining board or executive board. Before you would even go to any of the boards you would come to our union -- you must have a license to get into 14.

If he comes with a withdrawal card or a transfer card from another local, f he did not have a license and wanted to come into 14B they wouldn't accept it.

Q Does Local 14 or 14B keep a record of individuals with transfer cards who do not have licenses ?

A Well, 14B only. He might get into 14B without a license -- not 14.

Q But does the union keep any record of individuals who do not become members because they did not have a license but who have a transfer card from another union?

A We only keep records of people who do become members of 14 or 14B, whether they are transfers or new members.

Q Does one need a sponsor to become a member of Local 14 or 15B?

A If he is a new man without union affiliations, yes -- 14; not 14B.

Q How many sponsors does he need?

A Two.

Q Does the sponsor have to be a union member?

A Yes.

Q What is a voucher for membership?

A Well they are one and the same -- a sponsor is a voucher. He is the one that knows whether the man can operate all the different types of equipment. One of the questions they always used to ask -- I think it is overruled now -- it was mandatory that you have to ask whether you are a Communist, but I think that has been overruled. They don't ask that any more. But the vouchers are sponsors. We call them sponsors. They would tell you where they seen them operating the equipment and how long they worked with them. In other words, just what the word means, a voucher.

If I vouch for you I am saying that you can operate.

Q If a man has gotten his experience outside of the City of New York and doesn't know any sponsors or members of Local 14, how does he get sponsors?

A You mean come in as a new man?

Q He has had experience or claims that he has had a lot of experience but not in Local 14's geographic jurisdiction.

A What about his license? Do you mean licensed

or unlicensed or what?

Q Unlicensed.

A Unlicensed they don't take them into 14.

Q And if he had a license but had experience outside of Local 14's geographic jurisdiction, how would he obtain a sponsor?

A Well, that happens in some cases, but usually the men they get sponsor from the local someplace and maybe they have worked before they came into the local -- in other words, they worked, like you said before, on a permit.

THE COURT: I think we will recess now until two o'clock.

THE CLERK: Court stands in recess until two p.m.

AFTERNOON SESSION

2.00 P.M.

WILLIAM WADE, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. GLASSMAN:

Q Mr. Wade, at the break I believe we were talking about sponsors for Local 14 applicants.

Can anyone be a sponsor for a Local 14 applicant?

A A member in good standing.

Q Does a member in good standing need permission to sponsor another member?

A Yes.

Q How does he get such permission?

A He goes up to the prior meeting and asks permission to sponsor someone.

Q What meeting does he ask for permission?

A The previous meeting before he sponsors.

Q A meeting of the general membership?

A Yes, sir.

Q Do applicants have to be personally presented to the general membership meeting?

A Yes, sir.

Q When an applicant is presented does his sponsor have to be personally present?

A No.

Q Are sponsors normally personally present when an applicant is presented?

A I think they are, yes, sir, sitting in the audience.

Q Are there any other union committes to which an applicant must go before obtaining his membership?

A Yes,sir.

Q Will you describe them for us?

A The examining board and the executive board.

Q Can you describe in what order an individual has to go to each board and what happens at each board?

A The examining board, they try to determine the man's experience, ask him questions, look at his papers, look where he had been operating and what he has been doing.

Q What happens at the executive committee?

A Well, the examining board usually sends a recommendation into the executive committee on the following meeting after -- not both the same night, the next meeting -- and they in turn ask him some more questions and usually go by the recommendations of the examining board.

Q Can the executive committee ever overrule the recommendation of the examining board?

MR. KENNEDY: Is the question can they or could

they?

Q Can they?

A They can.

Q Do you know if they ever have?

A To my knowledge, no.

Q Are you a member of any of these committees?

A The executive board.

Q How long have you been a member of the executive board?

A Since 1953.

Q If an individual is found by either the examining board or the executive board to have had insufficient experience, what is that individual told?

A He is given a period of time to go out and get experience and report back; 30 days, 60 days, 90 days, however long he thinks it will take him.

Q In what way is he allowed to go out and gain experience during this period?

A If sufficient work is around some of the business agents try to send him out, help him to get experience.

Q If a man had experience but does not yet have a license, is he permitted to go out and get more experience?

MR. KENNEDY: He just told you in order to be a member of 14 you have to have a license.

MR. GLASSMAN: I would like to ask a different question.

MR. KENNEDY: I am sorry.

Q A person interested in becoming a member, he may have the experience but has not yet passed his licensing test, would the union allow him to go out on jobs?

A He could go out on a job where it is not critical for him to have the license.

Q What kind of a job would that be?

A Like some that you mentioned before -- you asked about the roller. Maybe some of the hydraulic backhoes.

Q When we were talking about the different kinds of equipment before, you mentioned cranes and backhoes and rollers that would be considered major equipment, I believe; is that correct?

A That is correct -- the big ones I said.

Q Is a gradeall considered a major piece of equipment?

A We consider it because it loads trucks, it hoists concrete on the trucks that are ripped off from the street. I don't know if the City considers it major equipment or not.

Q Local 14 does?

A I do.

Q Is a dragline considered a piece of major equipment?

A Yes, a dragline is just a crane with a different type of bucket on it. Some of them are very big. We have one working in Brooklyn for weeks dredging on the shore -- ten yards -- and that's a major equipment.

Q Is a clam shell --

A Dragline ten yards.

Q Is a clam shell considered to be a major piece of equipment?

A Yes.

Q How about a trenching machine?

A Well, there are different kinds of trenching machines. You can have a two and a half backhoe -- that is a trenching machine.

Q Would that be considered a piece of major equipment?

A Yes.

Q Is a power shovel considered a piece of major equipment?

A Yes, sir.

Q Is a tunnel mucking machine considered a major piece of equipment?

A No, sir; no license is required.

Q Is a license required on a roller?

A It's according to where you are going to work. If you want to become a roller engineer for the City of New York, which many of our men are, Civil Service, they require a license.

Q If you want to be a roller operator being employed by anybody other than the City of New York, do

you need a license?

A I don't know what the City says on it but I would send one of our men to run a roller he would have a license -- he would be a 14 man.

Q If a man then was not employed by the City of New York and wanted to operate a roller, what kind of license would he need, or might he need?

A If he is one of men he needs a hoisting license from the City of New York to become a 14 man.

If I send him out, if he is a 14 man and I send him out, he has a regular hoisting license. If he is a 14B man, he might go out on the roller without a license, if he is able to run one.

Q To get a hoisting license do you have to know how to run a roller?

A Yes, sir. That is one of the pieces of equipment they give you a test on, a roller.

Q Do you do hoisting when you operate a roller?

A No, sir.

Q Is an asphalt spreader a piece of major equipment?

A You don't require a license, I don't think.

Q That is not the question, Mr. Wade. I want to know, does Local 14 consider it to be a piece of major

equipment?

A Well, I would consider it because one asphalt spreader can keep three rollers busy and a lot of trucks.

Q Mr. Wade, has it always been a requirement of Local 14 that an applicant for membership be required to be qualified to operate three pieces of major equipment?

A Well, so far as I know they always want them to operate it. I can't speak before my time, before I became an engineer, but since I have been a business agent we always want them to operate, particularly every equipment, because it is hard to get them.

Q Aside from whether you want them, is it required for membership?

A They always ask them.

Q Were people who operated two or three pieces -- two pieces of equipment always rejected?

A Well, it's hard to say, because if a man is operating a big crane and a big backhoe, either one of those pieces could be changed into another type.

Q To your knowledge, Mr. Wade, have the bylaws ever had a requirement that one operate three pieces of major equipment?

A Yes.

Q Mr. Wade, were you present at hearings before the New YOrk City Commission on Human Rights in 1966?

A Yes, sir.

Q I am reading from Government's Exhibit 13B in evidence, Page 710 --

THE COURT: Has that been received in evidence?

MR. GLASSMAN: I believe it has -- if that page has not been received in evidence, it was marked for identification -- I stand corrected.

Q Mr. Wade, do you remember the following questions asked and answered by you --

MR. KENNEDY: Your Honor, I am going to object to this procedure for this reason: The witness is here. If he wants to ask the witness questions and to utilize something that is in evidence, either to refresh his recollection or to contradict his testimony, I have no objection.

THE COURT: Well, it is not to show his present testimony.

BY MR. GLASSMAN:

Q --"MR. WADE: Our position is on new members, that we want them to know to run more than one piece of equipment.

"MR. VALLON: How many?

"MR. WADE: More than one.

"MR. VALLON: Is it two?

"MR. WADE: More than one. I will say more than one.

"MR. VALLON: Is it two?

"MR. WADE: More than one."

Do you remember giving those answers at that time?

A That's a good answer. It could mean ten.

Q Was there any requirement by the union as to how many at that time?

A We don't just tell a man "You must go out and run this, this, this and this." We want them to be able to operate, for his own good. If a man can only operate one piece of light equipment it would be very hard for him to make a living at this business.

Q How do you decide on that piece of equipment to test a man?

A We might test him on ten pieces to see if he can run three, it's possible.

Q How do you decide how many you have to run before he can qualify for union membership?

A Usually he couldn't make a living at this business if he can only run one.

Q Mr. Wade, you said earlier, I believe, that the requirements for 200 days' experience prior to admission to the union might be waived for a man who had Sea Bee experience, I believe; is that correct?

A Had what?

Q Had experience in the Sea Bees.

A Well, if he had proven that he could --

THE COURT: The Army Engineers, I suppose, is the same.

MR. GLASSMAN: Yes, sir.

A If he could prove it.

Q Would that be the same for someone in the Army Engineers as well as the Sea Bees?

A Yes, it would.

Q Mr. Wade, how do members of Local 14 find jobs?

A The bigger majority of them find their own jobs.

Q How do they do that?

A Well, they might go to a contractor or maybe they worked for a contractor before -- maybe a contractor takes them from one job to the next, and then, of course, if the contractor does not know enough men or does not have enough of those that worked, he would get what extra men he needed from the union.

2pm

Q If the contractor wants to move a man from one site to another, does he let the union know where he is taking the man?

A He don't have to.

Q Does he usually?

A The engineer himself might call to tell us.

Q Does the engineer usually call?

A Oftimes.

Q Why does he do that?

A To let you know that he is on the job and he has finished up where he was.

Q Does a union try to fill the job where he was?

A If the contractor calls for him, yes. In some occasions, like what you just mentioned, if a guy leaves one job and goes to another, he might call us to replace himself, if the job was still in operation, the that he was on.

Q When you say "call and replace himself", what do you mean?

A He would say, "I am going to work over in Brooklyn. I was working in Downtown Manhattan", and "Send a guy in my place" -- a crane or whatever.

Q Does he ever try to find a man to replace himself on the old job?

A You mean the man himself?

Q Yes.

A It's possible he may have -- that he might have a friend put in his place.

Q Does the union have a hall to recruit people to work?

A Well, it is not in the sense of a hiring hall -- I know what you mean. If you are talking about a hiring hall agreement, we don't have that.

Q Is there a place --

A Where the men come?

Q When they are out of work --

A Yes, there is.

Q Please let me finish the question -- a place where people go when they are out of work to get a work assignment from the union?

A Yes, sir.

Q Where is that located?

A 141 - 57 Northern Boulevard, Flushing.

Q Is that a facility shared with Local 15?

A Yes, sir.

Q Has Local 14 historically shared a facility such as that with Local 15?

MR. KENNEDY: Objection to the word "historically."

THE COURT: I think that is all right.

A Yes.

Q Has 14 and 15 shared a hall of that sort during your entire membership in the union

A Yes, sir.

Q What officers of Local 14 are generally at the hall?

A The business agents are there from 7 o'clock is the hour -- some of them before that. I would say from 7 until 11 and then they are on the road in their respective areas.

Q Do you refer out non-union men as well as union men?

A Yes, sir.

Q About how many jobs do you refer people to in any one month?

A Again, it is according to how busy you are.

Q When business is good?

A It could be anywhere from seven, eight, ten a

a day.

Q How about when business is bad?

A This morning, none.

Q About how many in a month would you refer out say just before the recent slowdown?

A Four or five, maybe six a day.

Q On the average how many would be non-union people?

A If we were busy like you said, it could be a couple of them.

Q Would all of them have licenses?

A My own people, yes.

Q How about the non-union people?

A Some of them may have; some may not.

Q How does a man without a license but who can work some 14 equipment, is technically capable of working the equipment, generally find work?

A Some of these people, when they come to us probably have other jobs, they may be moonlighting. I know some of them are.

Again, I say to you, we can only send them on a jobwhere the license isn't critical.

Q Is there a particular order in which you send out men who come into the hall?

A No.

Q Is there a sign up list in the hall?

A What?

Q Is there a sign up list in the hall of any sort?

A We take an informal thing, look and see how many men are around and among the delegates we might know there are two piledriver men, a couple of backhoe men and a crane man.

And usually, like I said before, most of the men, lots of the men are specialists, so you send them out to what they are best adapted to and also, in many cases, our people live out in Queens and Nassau and Suffolk and don't want to work on the West Side of Manhattan. It is too far to come and we do try to refer them according to where they live when we can.

Q Do your procedures change at all when there is unemployment?

A Well, when there is unemployment you can't send so many people out.

Q Do you have any particular order that you send people out in when there is unemployment?

A Only according to what they can operate best.

Q What do you do if you have several people who can operate the same way and the same kind of equipment and

ask for a job?

A You come out in the hall and ask them. Generally the men that live in the area where the equipment is, he will take it.

Sometimes, two of them, you ask for the background and maybe two guys come together and are asked which one wants to take it and one might say, where do you live or we could take it according to that way. There is no seniority in our union, if that is what you mean; not on construction work.

Q What if there are two people who fit that description who both lived in the same area, what would you do then?

A Many cases they decide themselves.

Q They will agree, two of them in many cases, one might say to the other fellow, "You got a big family, you go."

Q Have you ever had a situation where the men couldn't decide by themselves?

A Well, not really. There is no hassle over it if that is what you mean, no.

Q When there are a lot of people out of work, do you ever ask them how long they are out of work?

A Yes, we do.

Q Does that make any difference on who gets sent out first?

A I think it would, yes.

Q Do you know if it does at the present time?

A Well,if a man comes up to the window and tells you that he has been in the hospital three or four weeks and was sick before that, you probably would intensify your efforts to put him out to work.

Q What is the window?

A Well, the man will come, we have a window and the men are out where they sit and come up to the window and ask us questions and give us beefs and all the business that the delegate would have to take care of. Sometimes they go out and talk with the men and sit down with them and get their beefs.

Q All the agents stay behind the window?

A They come and go in and out of the hall.

Q Do you ever refer out men who have gone to training schools around the City or in the metropolitan area?

A I don't know of any training schools in the metropolitan area, not officially. There is no official training school in the metropolitan area. Our own school is a training school.

Q There are no other schools whose training you recognize in order to send a man out to a job?

A No, sir.

Q Do Local 15 men ever come to a 14-B business agent and ask to be sent out on 14 equipment?

A They might.

Q Do Local 15 men ever get sent out?

A They might, yes, sir.

Q Under what circumstances?

A If we are very, very busy. All of our men are working.

MR. GLASSMAN: Would you give me one moment, your Honor?

(Pause.)

Q If a piece of 14 equipment becomes available on a job, can a 15 man ever get permission to switch to that piece of equipment?

A Yes, sir.

Q How would he do it?

A He calls one of his business agents and the business agent would talk to us. We might do the same thing in reverse.

Q Are there any particular Local 15 business agents who you would talk to?

A Any one of them, according to the area which they may be in.

If one of my men calls me and says he has a chance to go on a piece of equipment for a day or two in the Bronx and the equipment is covered by Local 15, I would speak to the business agent in the Bronx and get permission.

Q What would a man be paid if he worked on the equipment of 15?

A The 15 rate.

Q And if the 15 man, to use the reverse route, were to work on the 14 equipment, what would he be paid?

A Our rate.

Q If a man is sick or about to go on a vacation, does he call the union hall to ask for a replacement ever?

A Yes, sir.

Q Do they usually do that?

A Yes, sir. In some cases he might have a friend who is an engineer and he might take the job and finish up himself for a couple of weeks. He could do that himself.

Q If a man comes back from being out sick or back from vacation, can he get his job back?

A His job is his own. The job belongs to him.

Q How does it get held for him?

A What?

Q How does it get held for him?

A When he is going to leave he would call and let us know and send a man. If you are an engineer and you call me for a replacement, I tell the man that is taking your job you are two weeks in this place.

Q Do you generally know how long jobs will last before you send a man out to a job?

A Not exactly, no, sir. There may be an occasion when you get a call for a man for two weeks, three weeks, two days or even one day.

Some cases you might know when you send a man he will be there a little while. It is according to the physical part of the job, what he has to do.

Q Does the contractor usually tell you how long he expects the job to last?

A Quite often they do.

Q Do you usually communicate that to a man before he is sent on the job?

A Yes, sir.

Q Do men ever refuse to go on a job?

A Yes, sir.

Q What kind of reasons do they give you for

refusal?

A Well, one of the main reasons, an awful lot of them won't work nights, they don't want to work nights if it is a shift job.

If it is too far, if one of the engineers lives in the eastern part of Queens and Nassau and the work is on the West Side of Manhattan, by the time he gets out of Manhattan at 4.30 on the West Side it is a couple of hours and they don't like to work.

We have engineers that live in Jersey and that is where they like to work.

Q How about a man from Long Island would you ever send him to work in Staten Island?

A You know, it is not so bad now, they have a bridge there. But I worked there myself on a six-hour shift, six to twelve in the morning, and it is a hard thing.

No. 1, you can't afford to take your car. We used to take the ferry and park the car by 39th Street or somewhere in the vicinity and take the ferry for a nickel, and I think the ferry is still a nickel, and it is the only thing that stayed.

Then they have the Rapid Transit System you take to the job or near the job because cars even in the old days, it was 55 cents each way.

A lot of people didn't want to work in Staten Island. The ones that like to work there are the people that live there and the people that live in Bayonne or Jersey City or a place like that. If someone lives in Bay Ridge, it isn't so bad either, they can cross the bridge now.

Q If a man prefers to work fairly close to where he lives, do you usually try to get him work close to where he lives?

A Yes, we do.

Q If a new man comes into the hall who you have never seen before and says he can operate both some equipment that comes in 15's jurisdiction and some equipment that comes within 14's jurisdiction, where do you tell him to go?

A Well, if he is referring to my equipment, he comes to us. I have nothing to do with anything else other than an odd or two where I mentioned previous where I might ask for clearance for one of my men.

Q If he comes in and says he knows how to operate a roller or a backhoe and doesn't know which union has jurisdiction, what do you tell him?

A I might question him to find out what he can run and what he is talking about.

I might question him a little bit on his

experience, who did you work for, determine what he is talking about.

Q If most of his experience is on a 15 piece of equipment, would you send him to the 15 business agent?

A Probably, right.

Q Where else would you send him?

A That is right, and vice versa.

Q If it was a piece of 14 equipment that he knew how to operate, would you tell him to sit down? What would you tell him?

A Many cases we take his name and mark down what he runs, what he tells us.

Q If you had a job available would you send him out?

A Like I told you an hour or so ago, I might send him to a job to see if he could operate the equipment that he says he can run.

Q Would this happen in other areas, other locals and other parts of the country, if you know?

A No.

Q Why not?

A In the operating engineers in other parts of the country there is only one union that covers both ends of the business.

Q If a black or Spanish surnamed person comes into the hall is he given any particular special attention or told anything in particular?

A He is treated the same, as I just mentioned, the same as anyone else.

Q Do business agents of Local 14 ever get specific requests for minority workers on particular jobs?

A Yes, sir.

Q HOw often does that happen?

A From time to time.

Q Any particular kind of jobs on which it happens?

A Well, usually you get a request like that from a contractor; maybe he had problems in a certain area.

Q What kind of problems?

A The kind of problems that they get when they request those people.

Q You mean --

A I wasn't there, I don't know, but the kind of problems they might get.

Q Do contractors ever discuss that with you?

A They have, yes.

Q Any specific reasons they have given you as to why they needed minorities?

A Well sometimes black contractors call us up

and they want black people. Sometimes we can give them to him; sometimes we can't.

Q Did any contractors ever tell you they needed minorities because of Federal or State or City contract requirements?

A Yes.

Q What have you done when that happens?

A If we have the people they want, we send them, if they are out of work.

Q If you don't have enough, what do you do?

A Send what we have.

Q If you don't have enough, do you make any particular efforts to find any minorities who are qualified?

A If there are any available, we will.

Q How would you go about doing that?

A We would have to ask any men if they can operate a certain piece of equipment, if a guy called in.

For instance, I mentioned to you one man calls up, he likes to have a minority man on his hoist, and usually it's only of short duration. He is a black contractor, and even our black people don't want to work -- or the white people, either one -- they don't want to work on some kind of a short duration job, one

or two days, and I have to tell them that.

Q If you don't have enough people who are registered with the 14 business agent, enough minority people to fill a request, have you ever asked the 15 business agent if he might have people who might be qualified on a particular piece of equipment?

A We might.

Q Have you personally ever done that?

A I have sent a man on a roller or something in that area, yes, sir.

Q How often has that happened?

A Not too often.

Q Do you know how many individuals working under your personal jurisdiction as a business agent are black or Spanish surnamed?

A You mean under Local 14?

Q No, under your personal --

A My area, the work that I cover?

Q Yes.

A 25.

Q Do you know how many of those are in 14 and how many in 14B?

A I'd say three-quarters of them probably would be in 14B.

Q Have most of those people, 14B people, been organized by you?

A Yes, sir.

Q What is the approximate rate of pay of a Local 14 man, the hourly rate of pay?

A You mean the average between the highest and the lowest?

Q Yes.

A I'd say about maybe 9 and 9-1/4 an hour.

Q What is the highest?

A The highest is 10 something -- 10.05, something like that. The lowest is -- in some utility work it would be around -- including 14B, too?

Q Sure.

A 7.50 would be their rate, plus the fringes that the 14 men have. 14B have the same.

Q All 14B people get about 7.50 an hour?

A Most of them, yes, sir. Some of them much more. The men that are working on the stevedore work, their rate is higher.

Q What kind of work is stevedoring work specifically?

A Loading ships -- the same machines that load ships they use them on dock building work also.

Q What kind of equipment do they use in stevedoring work?

A Floating equipment, floating cranes, usually large ones.

Q What kinds of operators in Local 14 get the higher rate of pay, around $10 that you have mentioned?

A Shovel operators, long boom men, men on the climbing cranes; the backhoe operator.

Q Are those in heavy demand?

A When we are busy, they are.

Q Is it fair to say that most people in 14 generally receive a higher rate of pay than those in Local 15?

A No, the men in Local 14 on the smaller equipment, it is comparable to 15.

Q The people on the bigger equipment generally earn more?

A A little more.

Q Could there have been any special efforts made by Local 14 to train minority workers?

A We don't train anybody except our own people. We re-train them, keep them up to the current changes in the equipment.

Q Has Local 14 ever made any efforts to recruit

minority members?

A I don't know what you mean by "recruit." I know what the word means but --

Q Actively going out and trying to find people.

A Well, I do. When I organize non-union people it is recruiting.

Q Are you talking about in scrap yards?

A Yes.

Q That is for 14B?

A Yes, sir.

Q Any particular efforts for 14?

A I wouldn't know where to go to recruit people that had licenses for 14.

Q Have you ever approached a particular minority organization to see if they might assist you?

A No, sir.

Q Have you ever asked the Armed Services -- the Army or the Navy or the Sea Bees to see if they might assist you?

A Sometimes we have requests from them for our people that are going to go in there. We get requests from our people that are going into the Service, the Sea Bees or whatever -- not lately because they haven't been drafting our people but prior to the elimination

of the draft they drafted a lot of our people in service organizations on this equipment.

Q You mean they have taken a lot of engineers who were in the union to go into the Service?

A Yes, sir -- the younger ones.

Q Has the union, to your knowledge, ever made any particular efforts to find minorities that are in the Service who might be a source of qualified people to get into the union after they are out?

A No, we haven't because they are asking us for people.

Q Mr. Wade, has Local 14 ever placed any limitations on the size of its membership?

A No, but the membership hasn't increased, I don't think, in the last -- as long as I have been around.

Q Does the general membership vote on new members following an individual's having cleared the examining board and the executive committee?

A They used to, but they don't any longer do it.

Q When did that change?

A I think after our 1964 convention they changed it -- the International changed it.

Q What do you mean the International changed it?

A The International changed the International bylaws. They eliminated the men voting on new members. They eliminated the business agents being voted upon.

Q Do you know at that time if the International also suggested that members no longer, or prospective members no longer have to appear personally or with their sponsors at general membership meetings?

A No.

4.2pm

Q In your experience, Mr. Wade, are there usually enough qualified men around to fill all the jobs in the City of New York under Local 14's jurisdiction?

A Most of the time.

Q Have there been times when you couldn't find enough men?

A Yes, sir.

Q How often has that happened?

A When we were very, very busy.

Q What do you do then?

A We try to get them from adjoining locals where the men are trained and qualified to operate the same equipment.

Q Did you ever get people coming from New Jersey locals?

A Yes, sir.

Q And did you ever put them on your equipment?

A Yes, sir.

Q Do you know if those men have to have New York City licenses?

A If they operate the equipment requiring a license they do.

Q Do they operate other equipment?

A The ones that do not require a license, in some cases they wouldn't -- they have a license over there but I don't think there is any reciprocity between the State of New York and the State of New Jersey. They are licensed people, too. They also have a long boom license, the same as we do.

Q Do you know if Local 14 has ever sent anyone to high school careers to talk to people about opportunities in the Operating Engineers?

A Send them to high school? I don't think any of our people are smart enough to go and tell them. You would necessarily have to be like a teacher or something of that category.

Q Is entrance to membership in the union ever limited you to employment conditions?

A Yes. When the men used to vote on the new members it was a slow period of time, there was no reason

for them to vote new men in when they were sitting there out of work themselves. In that case they would be put on the list until it got busy again.

Q Is there any rule-of-thumb as to how many members, even in good times, can be admitted at any one meeting?

A There's no hard and fast rule.

Q If 20 qualified individuals at any one time were presented to the membership could they get in at one time?

A I don't remember it ever happened, 20 at one time.

Q Would there be any limitation on that on the part of the union?

MR. KENNEDY: He just so testified, your Honor, that there is none.

MR. GLASSMAN: I think the witness can answer his own questions.

A There is no rule that spells out numbers against.

Q Mr. Wade, were you present at hearings in 1963 before the New York City Commission on Human Rights?

A Yes, sir.

Q Now, referring to Plaintiff's Exhibit 13A for identification, Pages 125 and 126 --

MR. KENNEDY: I will stipulate that he was asked those questions and gave those answers.

MR. GLASSMAN: I would like to find out whether they were accurate or not.

THE COURT: That is all right, go ahead.

Q [continuing] Do you remember being asked the following questions and giving the following answers:

"Q Let me ask the question I asked Mr. Cuff:

"What would happen if, as a result of community efforts, we were able to produce fifteen or twenty men who would qualify, either because they have got licenses and they are working outside your union, or they have no licenses, and they have been working as helpers, but would appear to be ready for moving into Local 14?

"Would there be any limitation on their being able to get in?

"A Only according to the condition of work at the time.

"At our meetings, they generally ask the business agent how work is before they vote on new men.

"Almost always and almost at every meeting, they ask. The condition of work depends on whether they are going to vote on new men.

"In other words, we would not want to take twenty new men in the local, no matter what color they are and have them be out of work; that is no good, and not a good thing to do. If you take twenty men and put them out of work and leave them out of work, it is no good.

"But I don't see any reason why, if we were busy, and there is plenty of work that we would not take them in. I don't say we will take twenty -- we would never take twenty all in at one time, that is for sure."

Do you remember giving those answers to those questions?

A Yes, sir.

Q Was that true when you made those statements?

A Yes, sir.

Q Would that be the same position of the union at this time?

A Like I said before, I never remember them taking twenty in at one time. There's a possible exception to that. When I organized some of these big scrap yards, when I had everybody signed up taken in -- I think one of the big companies, when we organized them in 1958, they probably had in excess of twenty people, all non-union, both black and white.

end.

T5

Q Aside from the organizing efforts for 14-B, had that ever happened in Local 14?

A I never remember them taking in 20 at one time.

Q If 20 were available would there be any problem to taking them in, 20 fully qualified men?

MR. KENNEDY: Your Honor, I object to this question. It has been established both in the testimony from the witness and from the reading of the transcript.

MR. GLASSMAN: I am trying to find out whether the answer given in 1963 would still be the same answer if asked today.

THE COURT: Go ahead.

A I didn't make any change in what I said in 1963, I don't think I did.

You are mentioning a hypothetical figure, aren't you, in that 1963? That was a hypothetical answer.

Q You would give the same answer to that hypothetical today?

A Yes, sir.

Q Mr. Wade, about how many operating engineers in Local 14 would you say you know personally?

A Probably about three-quarters of them, maybe a little less. Somewhere in that area.

Q Have you any idea of how many have gotten a

college education?

A What?

Q How many have gotten a college education, if any?

A You know, I think we have a couple that got their college education after becoming engineers.

But we look upon them, it is a funny thing, but we have a couple I think of college educations primarily through night school or something so they could become engineers. But we look upon them as, pardon my expression, sea lawyers.

Q Is the same thing true for Local 15, if you know?

A Local 15, I don't want to say anything good or bad about them because I don't know, that is just hearsay. I never was in Local 15 and I have four sons never in Local 15, so I don't know anything about them one way or the other.

Q Do you know how many men in Local 14 have gotten a high school diploma, approximately?

A A lot of them. Because the chances of employment in our business, below that, would be nil. In other words, they couldn't come to us until they had gotten the high school education.

Q That is not a requirement for membership?

A Membership, they would have to go -- you can't get a license until you are 21. It is not a requirement for membership, high school.

MR. GLASSMAN: I have no further questions, your Honor.

MR. KENNEDY: May I inquire, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Wade, you have been a member of Local 14 since 1937, is that correct?

A Yes, sir.

Q When you became a member or affiliated with Local 14, were there any blacks in the union?

A Yes, sir.

Q Do you know how many, sir?

A I would say over 40, around that.

Q Were there other minorities in the union at that time?

A Yes, sir.

MR. GLASSMAN: I would like Mr. Kennedy to define minorities. Do you refer to --

Q Were there Indians in the union at that time, Chinese?

A I don't know. I couldn't --

Q Hispanics?

A Yes.

Q Are there blacks and Hispanics in the union today, sir?

A I would say there are.

Q Can you give us your opinion as to how many, sir?

THE COURT: Don't we have a stipulation on that?

MR. GLASSMAN: I think we have a stipulation on the record.

MR. KENNEDY: I am only asking the witness for his recollection.

A I would say at least 50.

Q Did you organize the various concerns that employed the 14-B people?

A Yes, sir. Not all of them but most of them.

Q Now, about how many companies have been organized since you were doing the organizing?

A 14-B?

Q Yes, sir.

A Maybe eight or ten, maybe a little more when you count some of the other branches of the industry.

Q Those consist of scrap yards, brick yards and

stevedoring, is that correct?

A And on occasion -- we don't have very many, but non-union waterline outfits.

Q They employ about how many men, sir?

A All of them together I would say about 150.

Q And there are blacks and Hispanics, are there, in 14-B?

A Yes, sir.

Q What kind of equipment do the people in 14-B operate?

A Most of it is the same kind of equipment that they operate in 14 except that it is on private property or it is floating equipment and some of it is in another State.

Q In other words, if you have a stevedoring rig, floating rig, used in stevedoring work, that same rig could be used to build a dock and one would be 14-B jurisdiction and one would be 14, is that correct?

A Yes, sir.

Q Now, do you encourage the members of 14-B to obtain licenses, sir?

A Yes, sir.

Q When do you do that?

A All the time.

rp6 Wade-cross

Q Are there transfers from 14-B into 14?

A Yes, sir.

Q That is when they acquire the City license, is it?

A Yes, sir.

Q Are there people in 14-B employed all year round?

A Most of them are employed steadily.

Q But if they wanted to transfer into 14 and obtained a license, they could do so?

A Yes, sir.

Q Do they need a sponsor then, sir?

A No.

Q If a person comes from another operating engineers union and passes the City license test, does he need a sponsor?

A No, sir.

Q When is a sponsor necessary?

A When a man doesn't have any affiliations.

Q At all?

A None.

Q Now, who sponsored the blacks in 14-B when they were organized?

A I do.

Q Anybody try to keep them out of the union?

rp7 Wade-cross

A No, sir.

Q You are familiar with the types of equipment that are utilized by 14 men in your area, is that correct?

A Yes, sir.

Q Do you have operating engineers employed over here in the Battery Park Project?

A Yes, sir.

Q Insofar as only the 14 men are concerned, what type of equipment is utilized from time to time during that project?

A Floating cranes, piledrivers mainly. From time to time there may be a compressor or a concrete pump.

Q Which pieces of equipment require a license and which don't?

A Cranes and piledrivers.

Q What percentage of licensed equipment is there to non-licensed equipment on that job?

A Most of it requires a license.

Q Could you give us a percentage?

A Well, to give you an idea, we might have three or four piledrivers, three or four cranes and a concrete pump that pumps the concrete out of the deck, and that is the only work, they only work intermittently. That wouldn't require a license, but it would require a man that under-

stands the pump good.

The compressor that they use intermittently to break concrete, that doesn't require a license.

Q Can you fix a percentage at all, Mr. Wade, of the licensed equipment to non-licensed?

A My thought is it would be about 90, between 90 and 95 per cent requires a license.

Q Is that true of all of the work that is done in your area, talking about sewer work, talking about heavy construction and dock work?

A I would safely say 90 per cent and the only work that wouldn't require a license on the sewer work might be the compressor which they don't use steadily, just to put some sheething down and a piledriver in there.

Q The piledriver requires a license?

A Yes, it does. The cranes doing the digging, they require a license.

Some people say the backhoes, hydraulic backhoes don't require a license, but our people that operate them have a license.

Q Do the employers have the right under the collective bargaining agreements to transfer a man from one job to another?

A Yes.

Q So that if a man starts out perhaps operating a non-licensed piece of equipment and is asked to switch to a licensed piece of equipment, the employer has the right to ask him that, doesn't he?

A He generally tells him.

Q And have you been involved in lawsuits with the union where non-licensed operators have been made parties to a suit along with the unions --

MR. GLASSMAN: Objection as to relevancy of these questions.

THE COURT: It may be relevant.

Q Have you, sir?

A Well,sometimes -- we don't have any non-licensed people of our own. So the people that would be involved in something like that do not belong to my union.

Q Has the union been sued for supplying them?

A I don't think so.

Q You were asked about challenges, Mr. Wade. What is the purpose of a challenge?

A Someone would come around the job and somebody comes in on a piece of equipment, the engineer normally runs, if he doesn't know the engineer on it or the operator, he might go over and ask him, "Do you have a book? "

Q Why, sir?

A Because the particular piece of equipment is the jurisdiction of our people. So he would be protecting the work that is under the jurisdiction of our union.

Q Isn't it a fact, Mr. Wade, that if the operator on the job asks the person for a book and he showed him an iron worker's book, he would report that to you?

A Yes, he would.

Q And that would be a jurisdictional dispute between you and the iron workers, would it not?

A Yes.

Q Now, you were asked questions concerning your testimony before the Human Rights Commission. Are you familiar with the 1961 by-laws of the union?

A Yes.

Q Was there a provision at that time as to the number of pieces of equipment that you had to operate?

A Just like I said before, it could be ten and they wanted you to pick out so that you could operate two or three or whatever.

Q But there was no requirement at that time, was there?

A There was a requirement that you operate a piece of heavy equipment.

Q Thereafter did it change?

A They wanted more hours, days, not hours. 200 days.

Q What was the purpose of those changes?

A Well, I think because there was more proof, you were able to get at the truth of the proof, what the guy was saying. If he could prove he had 200 days operating different types of heavy equipment --

Q Was there any consideration given by the union in changing those by-laws concerning developing the flexibility of a member?

A Well, like we mentioned before to the other counsellor, our people tend to be specialists and we try to get them away from that specialized thinking and operate more types of equipment.

Q If a man operated only a backhoe machine, could he make a steady living in your jurisdiction during the course of a year?

A I don't think he could.

Q How about a spreader?

A He would be busy in the summertime and out of work in the winter.

Q Suppose he only operated a long boom crane?

A Right now he would be out of work.

Q If he operated two or more pieces of heavy equip-

ment he has a better chance for employment, doesn't he?

A Yes, sir.

Q If he has a license does he stand a better chance of gaining employment that if he does not have a license?

A Yes, sir.

Q In other words,the so-called permit man would have less of a chance at developing his skills throughout the City in your jurisdiction than a licensed engineer, isn't that correct?

A That is correct.

Q Since 1937, Mr. Wade, you attended meetings on a fairly regular basis?

A Yes, sir.

Q You have been a member of the examining committee?

A Yes, sir, for a short period of time, a few years.

Q And a member of the executive committee?

A Yes,sir.

Q Do you ever recall either blacks or Hispanics being rejected for membership?

A Never.

MR. KENNEDY: I have no further questions.

MR. BRADY: Your Honor, I have just a few questions.

BY MR. BRADY:

Q Mr. Wade, in your prior testimony you discussed the oiler's functions on a crane, do you recall that?

A Yes.

Q You adopted the terminology of a helper?

A I meant the oiler.

Q Actually, there is no designation of helper, is there?

A No, sir.

Q He is an oiler from a separate distinct local union?

MR. GLASSMAN: He is leading his own witness.

MR. BRADY: He is not my witness.

THE COURT: We can straighten this out.

A I just call them, to answer you, I call you a helper, because if I am running the crane and he is with me --

Q He has his own distinct function to perform, does he not?

A Yes, sir.

MR. BRADY: No further questions.

MR. GLASSMAN: I have no further questions, your Honor.

rp13a Wade

THE COURT: All right.

(Witness excused.)

THE COURT: We will take a short recess.

(Recess.)

MR. GLASSMAN: The Government calls Ralph Dalton.

R A L P H D A L T O N , called as a witness in behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Dalton, how are you employed?

A At present I am employed by E. C. McCann.

Q And what do you do for them?

A I am a hoisting engineer.

Q Are you a member of Local 14?

A Yes.

Q Have you ever been an officer of Local 14?

A I was an officer up until last Friday.

Q And what office did you occupy?

A I was president.

Q And for how long were you president of Local 14?

A Fifteen years.

Q Could you describe for us briefly your duties as president of Local 14?

A Well, my principal duties is to chair the meetings, the regular meetings or any meeting for that matter, and sign all checks and turn them over to the treasurer; serve on committees ex officio, on all

committees, and anything that the union may designate that is in the nature of attending State meetings, national meetings, various meetings -- things like that.

Q Mr. Dalton, how long have you been working in the trade as an operating engineer?

A Fifty years.

Q How did you get your first experience?

A Well, my first experience -- actually I didn't have any intention of going into this business but my father was an engineer and he had a garage and a Chevrolet agency in the town of North Hempstead -- that is, he had withdrawn from the business, so as a teenager I worked on automobiles and became a mechanic on gasoline engines, and then we had a depression in 1923, a very severe one, and my father lost his business and he went back to work, and I went with him as a fireman -- in those days mostly everything was steam, and we started in by passing coal, as we call it, -- you had to carry coal to the machine -- to keep traveling, we had to carry the coal in a nail keg. They would dump the coal here and then they would have to keep moving, and then we would carry the coal to the machine.

Q Were you working with any union jurisdiction at that time?

A Yes.

Q What union?

A I was working in 184A.

Q Is that an Operating Engineers local or was that an Operating Engineers local?

A At that time it was an apprentice local to 184, which was the engineers local at that time.

Q What equipment did Local 184 operate at the time, briefly -- what type of equipment ?

A Well, practically the same type they have today -- the motor power is different, that is the only difference.

Q The same type of equipment?

A The same type of equipment, only in place of having a steam boiler on it today they have a diesel engine or a gasoline engine.

Q And if your remember, Mr. Dalton, approximately how many members were in Local 184 before it became amalgamated in Local 14?

A Possibly 800.

Q And if you remember, Mr. Dalton, approximately how many men were working in Local 184A at that time?

A Well, this is an only an educated guess, because, you know, it's 50 years ago.

Q To the best of your recollection.

A I would say about 400.

Q You referred to 184A as an apprentice local. What type of training did 184A men get on 184 equipment?

A Well, I referred to -- the only way I can say it is my own experience, what I had to do. I had to carry tons of coal, five tons a day actually on my back, to get started; and then during the lunch hours or whenever I could, why, I would operate -- try and get experience operating the machine, and then to get the license at the time we had to go to some engineer that had a license and he would coach you -- more or less an individual proposition.

Q When Local 184 became amalgamated with other unions into Local 14, what happened to Local 184A?

A Well, before the amalgamation they had a split -- I mean, they weren't there. Actually they split and as they come back they amalgamated -- 184A became first 130A.

Do you want me to continue?

Q Did the men whose jurisdiction was under 184A ever become amalgamated into the present-day local 14 or Local 15?

A No. When the amalgamation took place they obtained a charter of their own, but in order to do that

they amalgamated with various other locals like -- they were actually an engineers' local, although they are mostly maintenance engineers.

Q Is there a modern-day successor to Local 184A?

A 184A?

Q Yes.

A That would be 15A.

Q Mr. Dalton, when did you first join the Operating Engineers Journeyman Union?

A The date?

Q If you remember.

A September 4, 1924.

Q Was that Local 184?

A Local 184.

Q How did you get in?

A I transferred from Local 184A.

Q Did you have a sponsor?

A I didn't need any sponsor for a transfer. YOu put in your transfer to any local and it is up to the local to accept you or -- [pausing].

Q Mr. Dalton, do you remember your deposition being taken on March 8th of this year?

A Yes.

Q Referring to Pages 5 and 6 of Plaintiffs'

Exhibit 51 for identification, I would like to ask you if you remember being asked the following questions and giving the following answers:

"Q Were you referred to the union by anybody?

"A Well, my father was a member of the union. He actually was my sponsor when I went into the union.

"Q What union was it when you first joined?

"A Here's my book. It's the International Operating Engineers, Local 184".

Do you remember giving that answer to that question?

A Yes.

Q Do you know if that answer was incorrect or whether in fact you needed a sponsor?

A Well, I think that is a matter of semantics, this sponsor thing. I mean, naturally my father -- I was very young at the time -- actually my father went with me. It wasn't necessary to have a sponsor. You know, I thought of it in another context. My father naturally went with me. We lived out in Port Washington, Long Island, and the union hall at that time was in New York, on 60th Street. Well, I was a kind of a country boy at the time, and going to the big city, he took me in.

Q Do you remember if you were given a test at that time?

A Well, I was given a verbal examination by the -- they had a committee that gave you an examination. The steam boiler was a dangerous thing, you know, a pressure vessel, and they just couldn't let you -- they questioned you to see if you are pretty well familiar with the boiler.

Q Did they give you any practical test at that time?

A No, because the practical test would be carrying coal or shovelling coal.

Q At the time you joined Local 184 had you actually operated any equipment?

A Yes, I worked three years at 184A and acquired a knowledge of operating.

Q Did you have a license at the time?

A I had to have a license to get in.

Q What kind of a license was that?

6.2pm

A New York City, the same license -- no, mine was a steam license at the time -- New York City steam.

Q When you first got into Local 184 what kind of work did you do in the beginning?

A I operated cranes which, incidentally, gasoline

was coming in at the time. There was a transition period there in 1924 - '25 when the steam was being phased out and the gasoline was coming in, and being that I had the experience in the garage and with gasoline motors and all, I was successful from the start in obtaining employment.

Q Mr. Dalton, would you state for the record what your educational background is.

A I graduated from Public School -- that's all.

Q What grade is that?

A Eighth.

Q Do you know if there are other people presently in the local you knew who have become members who have not gone to high school as well?

A Well, I imagine that there were -- there's not too many of them left around but years ago that was a very common thing, not to go to high school. They went to work.

Q Mr. Dalton, do you remember if there were any black members in Local 184?

A Yes.

Q Do you know if there were in 184 when you were a member than there are 14 now?

A Well, I couldn't say that because years ago

we didn't pay that much attention. I mean -- I think there were more in the old days than there are today.

Q Do you know what happened to them?

A No. I actually don't know why there were more. They didn't seem to go in for our type of business.

Q Mr. Dalton, what would you say is the best of obtaining training for Local 14 equipment?

A Well, the best way would be the member of 15, 15A.

Q And what kind of training would you get there, briefly?

A Well, you would be working on the actual equipment that you were going to run when you get into the Journeyman's local.

Q If a person in Local 15 really wanted to eventually become a member of 14, do you know how he would make sure that he got proper experience?

A A member of 15 -- now, there is a distinction there between 15 and 15A. However, 15, of course, are engineers, the same as ours.

I don't know that I quite understood. Would you repeat that?

T7

Q Well, if an individual was in either 15 or 15-A and he personally wanted to eventually to learn 14 equipment and get into 14, what steps would he take to make sure he could get the proper experience? How could he help himself?

A I would say if he is working with me it wouldn't be too long before he would be doing more work than I would. I wou ld be teaching and he would be working. I mean any fellow in 15 goes to work with a 14 man, he is going to absorb that especially if he puts in a couple of years on it, three years.

Q Is there any particular difference between 15 and 15-A for the purpose of getting experience?

A No, but of course in 15 the man is a maintenance engineer as opposed to an operating engineer and he has become a journeyman, a maintenance engineer, which is a very important job. He has to see this equipment is running in proper order and there is a big safety factor involved in this work. I hope everybody realizes that.

Q Do many people get trained by relatives of theirs on the job?

A Well, yes, I would say so. But I don't think it is because he is a relative, probably because he is an engineer. He is the one that can train him.

Q Do you know many people in Local 14 or 15 who trained their relatives that way?

A Well, I am not actually too familiar with what happens on the job now because the position that I have doesn't require me to be out where the actual action is.

Q I am just referring to your years in the union or your own experience.

During your years in the union was that fairly common to have an operating engineer bring in his son or other relative?

A I imagine if his son wants to go in that business, he certainly helped him.

Q Does the union encourage that?

A We don't encourage or vice versa. I mean, we don't have any rules regarding that.

Q Mr. Dalton, have you ever tried to establish a formal apprentice program for Local 15 or 14?

A Yes. It was tried, but through the years -- it was tried, yes.

Q In what way was it tried, can you tell us?

A We had through the years, we had meetings, we have to start out with the fact that Local 15 has the jurisdiction over the apprentices. You run into agreements here and you run into agreements that you have with the

contractors and you run into the two types of jurisdiction.

So we couldn't initiate an apprentice rule because we don't have any apprentices. We have no apprentices in our local, we are all journeymen.

Q Why couldn't you initiate an apprentice program?

A It is a matter of jurisdiction with our International Union.

Q Is 15 cxonsidered the apprentice local for Local 14?

A No, 15 and 15-A is the apprentice local for 15. We are not connected in any way with 15 outside of the fact that we belong to the same International.

Q When 14 first obtained its independence charter, did it then exclude the possibility of having an apprentice program of its own?

MR. KENNEDY: Talking to -- when you say did it exclude, did the charter exclude it?

MR. GLASSMAN: Yes.

Q If you know.

A No, there is no -- no,the charter wouldn't, it wouldn't be on the charter. However, it is a matter of jurisdiction with the International Union. Every local has certain jurisdiction.

The reason we had to amalgamate that time, we

had to amalgamate because there was four locals with the same jurisdiction in New York. Due to court cases and all, these are the things that happened when you are trying and starting something with somebody else's jurisdiction. It took us many years to get over that.

The last thing we want to do is have an argument between locals again. That is why we haven't been able even if we wanted to, to establish an apprentice organization because it is not our jurisdiction.

Q Who has jurisdiction in the New York area?

MR. KENNEDY: He just testified, your Honor, not once but twice, that that is the jurisdiction of 15 and 15-A.

Q Mr. Dalton, were you personally involved in efforts to try to establish an apprentice program for Local 14?

A Not for Local 14, I certainly wouldn't. I am not looking for a jurisdictional argument, not for Local 14.

Q Mr. Dalton, about how many different types of equipment are operated by Local 14 engineers?

A Offhand I would say there are 50 different types of equipment.

When you say "type," it doesn't quite cover it because there could be, say, 50 types of shovels. That

would be like having a Buick, a Ford, a Chevrolet and so on. However, unlike automobiles all of these pieces of equipment operate differently. A lot of times knowing how to operate one shovel wouldn't help you any if you got on another shovel because it is a different operation and there doesn't seem to be anything uniform about them.

Q If someone operates one kind of shovel how does he learn to operate another kind?

A What I would do, for instance, there is usually a job going some place where there is a big amount of equipment and if you are on that job and operate one kind, you make it your business to get familiar.

Naturally, it comes much easier to you if you can operate a shovel, to operate another kind. Once you can operate one, it is fairly easy. But it is not sure that you can operate one and you would hesitate to go and take over a piece of equipment of that nature if you didn't know how to operate it.

Q If someone knew how to operate a piece of 15 equipment and there was similar equipment in 14 but larger equipment, how difficult would it be for him to learn that?

A Well, of course, like everything else,it depends on the man himself. I guess it is the same in any business. Some fellows is easier than others.

The fellow that it may be very difficult for, he may be the best man in the long run.

Q Any particular equipment on which it is a lot easier to learn the 14 version if you are running 15 equipment?

A No, I wouldnt say there is anything that is easier than the other. That is why most of these things, why people follow up one type than another, because they feel mor confident with one type of piece of equipment than maybe another type.

Q If a man has been in Local 15 for a while, say, operating rollers or backhoes, things like that, and then he later on transfers to Local 14, is he likely to try and stay on this kind of equipment?

A No question about it because he had the choice to become an engineer in two ways, as an operator, which is 14, or as a maintenance engineer, which is 15, which is the mechanical end of it.

Some fellows never want to work as mechanics, they prefer to run equipment and vice versa. The maintenance man, he doesn't want to run equipment, he wants to repair it.

Q Is there any particular kind of equipment in Local 15 in which a man would have any special hard time in

trying to learn the Local 14 counterpart?

A Well, I don't exactly know what you mean. Are you speaking on like maybe something in a different size?

Q Yes.

A Well, size I don't think makes any difference with operating something. It never made any difference in anything that I ever saw, that size would make a difference.

Q How about it on operating cranes, what are the differences in difficulty in operating other cranes?

A The difference in operating a crane is what happened, I operated on structural steel for 22 years and the booms kept getting longer and I looked up through my eyes and they reached a height as far as I could see and that was the end of me as far as it and that is what makes it difficult in the crane.

Q Different size cranes have similar levers and mechanical operations?

A Similar, but they are not like a car. The cars are uniform and I remember the days years ago when the car shifts were all different, too, and you used to have that difficulty. They didn't change that until about 1920.

Q If you got a different model crane that you wanted to operate, does the manufacturer give you some

specs to figure out which way to shift the levers or operate it?

A Yes, the manufacturers historically would prefer to have more people that can run their equipment because of the better chance they have of selling it. They always, any of them, you can go up to their yards and they will be tickled to death to have you, union or non-union or anything else.

Q If someone has been operating one brand or model crane and wanted to learn another one, will he refer to the manual or just learn on the job?

A Obviously he could do it much better on the job or do it up in the yard of the people that make the equipment. They would be glad to show him.

Q Skipping different models of similar equipment for the time being, about how many different types of equipment would you say there are in Local 14's jurisdiction?

A We had a list. I would say without differences between types, that could be 20 different things, I would say about 40 types.

Q Does every member of Local 40 know how to operate most of these?

A Most of it possibly I would say, but not all.

I don't think there is a man alive that -- I operated everything that I can think of through the years, you know, but I am sure that I have missed something along the line.

Q Would you say that you are more qualified or operated more equipment than most people?

A Well, you know, modesty enters into it here, but I was always available no matter what they hollered out.

Q Mr. Dalton, are you familiar with the union re-training school, the Local 14 retraining school?

A I have only been there once when they opened it, when they had an opening and the photographer was there.

Q Do you know when that was?

A I can only guess. I would say about five years ago.

Q Do you know how many people are in the school at any one time?

A Well, yes, sir, but the fact is that you are limited by time. The thing here in teaching somebody, you got to have experience, so usually you can only handle about eight men, because if you give them an hour apiece, that takes up eight hours already.

You get that one piece of equipment and one man got to stay there on it and when he gets off, another man

gets on. So I would say that it would be limited actually to about eight.

Q How did people get re-trained on new equipment before the school was established?

A They went up, as I mentioned before, if I wanted to learn something about a new piece of equipment, I would go up to the manufacturer or the manufacturer's agent here and they would usually have a model there like out in Long Island and some other places. They are all agents for this type of equipment. That is where I would have gone.

In fact, I have to go there now. We can't possibly have all the equipment. The equipment costs as much as a million dollars apiece. We certainly couldn't have all that sitting there. You got to keep something like that, you got to keep it working.

Q Has the equipment really always been expensive?

A No, no, it wasn't but that is why they are producing so much more, you know. We couldn't possibly believe years ago that you could build things that big, that expensive.

Q When had the price of equipment started changing?

A After the war -- after World War II they started to build bigger and bigger and longer and longer.

Q Are there many pieces of equipment that cost a million dollars, or is that pretty rare?

A Well, it would be rare in New York City, yes, probably.

I am going more or less -- thinking about these stripping things which cost maybe twenty million -- stripping shovels that strip the top soil off in the mines.

Q Have they ever used them in New York?

A We haven't discovered coal yet, but I think we have struck oil off Long Island!

Q Is there any particular work in your experience under Local 14's jurisdiction that you consider to be easier work or lighter work for men?

A Well, there's two things -- there is physical

work, you know, which I consider lugging that coal, and then there is work where you have, like setting steel. Well anybody in the city here has probably watched iron workers work. You can imagine if you have to watch them all day you would be nervous, because you think they are going to fall off, because you are watching them. So it is hard to say one type of work is easier than the other, you know -- one type to me might be easy and for somebody else of a different temperament it might be tougher.

Q Is there work still done today that is comparable to the lugging of the coal work -- comparable to the work that you described in earlier years?

A Well, the only thing I could compare with it is you have today fuel in any type of equipment that you are running, and possibly you could be in a certain place or in a certain position where you have to lug five gallon cans of gas to fill up the machine -- you know, sometimes they hold 60 gallons upstairs and 80 gallons downstairs. If you are in the wrong place you would have to cart that.

Q Is there any particular people in your experience -- operating engineers -- any kind of work

that operating engineers don't like to do?

A Work that they don't like?

MR. KENNEDY: You mean individually or as a generalization?

Q Your general experience, talking to operating engineers, let us say, in the last ten or twenty years.

A Well, I would rather put it the opposite way, that there are certain things that they do like, that they follow up, you know. Like we have so many different -- well, we have contacts with all these different contractoral groups. We do all kinds of things, and some people, like I was 22 years setting steel. Well, I didn't -- why was I setting steel in place of maybe running a shovel -- you know -- and the reason was that there was more money in setting steel.

Q Is there any other kind of work, let us say, in the last ten years, aside from more money, that the people like for any other reason?

A It is hard for me to say what people like or dislike or why. I couldn't say.

Q Is there any particular type of work within Local 14's jurisdiction where a man stands a better chance of making more money?

A Oh, yes, because we have all different rates.

We don't have one rate. We have a rate according to what we consider the difficulty of the job, or the skill attached to it may be different. It just happens that a shovel and steel can command that -- and now we have these whirlies -- I don't know what they call them, but to me --

THE COURT: The Australian cranes.

THE WITNESS: Australian I think was the first one we had here --

A Did I answer the question or did I go off?

Q During your years in the union, Mr. Dalton, about how many new men would come in each year?

A Well, I would say 50.

Q About how many men passed away or retired, average per year?

A About the same.

Q In your experience, aside from reaching from a slow-down, if there is one, has there been much unemployment in the last 30 years?

A Well, we have had unemployment up until World War II. After World War II was when we started to have full employment.

Q Have you had full employment?

A Prior to that -- well, this applies to the

whole labor movement, I would say, not only in this city, but in the whole country.

Q Has there been pretty full employment since World War II?

A Since World War II things have been better. Prior to that labor not only was , but any labor was not in too good a position, I mean.

Q In your union in particular, since World War II has there been unemployment in Local 14?

A Well, we always have a little unemployment, you know, but we have never, since that time, I don't recall that we have had a real big unemployment problem.

We had an unemployment problem here possibly around ten years ago for a time there.

Q How long did that last?

A Well, it lasted probably about three years. Now it may have been prior to -- what did I say, ten years ago? That would be '64. This was around, say, '62, '63, '64 -- for about three years there we had an unemployment problem.

Q And between '64 and the present have you had pretty steady employment?

A Yes, we have been very good.

Q When the Civil Rights Law of 1964 was passed

was there any discussion of it in the union?

A Yes.

Q Could you tell us what was said?

A Well, what was said was principally that -- well, let me think a minute, because I don't want to say something here that might offend the lawyers.

The big discussion was, I will tell you, there were two people that we had to get right away at that time, because up to then we had no lawyers. We had to get lawyers as a result of that, and we had to get publications -- you know, with the law and all. We read up on the law. We went to Cornell, a group of us went to Cornell for a course just on that particular law, and it certainly was a topic of conversation.

Q Did you expect it would have any particular effect on the union?

A Yes, we thought so.

Q What effect? What did you expect?

A Well, personally we never expected any trouble at all because we thought that the way our bylaws were written at the time that Taft -- and I am going back to Taft-Hartley now -- that Taft-Hartley could have written it from our bylaws. We have had things there for years that other people hadn't with regard to elections and

things like that, so outside of that, that was the principal effect that it had on us at the time.

Q Did you have a closed shop until 1948 when Taft-Hartley was passed?

A A closed shop?

Q Before Taft-Hartley.

A No, I think -- no, we didn't because before Taft-Hartley we were still organizing. Our principal job years ago was organizing. That was the big problem years ago. Today you don't have that problem since Taft-Hartley -- in fact Taft-Hartley was what enabled everybody to get organized.

8.2 pm

Q Has the union practice changed at all after Taft-Hartley?

A Well, they changed due to the fact that the unions could go in and demand an election which they couldn't do prior to that.

MR. GLASSMAN: One moment, your Honor.

[Mr. Glassman confers.]

Q Mr. Dalton, if you signed up or organized any shops before 1948 did they have to hire union men?

MR. KENNEDY: Your Honor, I thought this was a Civil Rights case. On Taft-Hartley I am going to object.

THE COURT: How much longer are you going to be?

MR. GLASSMAN: Just a few minutes, your Honor. I think we are almost done.

THE COURT: Well, he can answer that.

[Question read by the Reporter.]

MR. KENNEDY: If he knows.

A I don't know. We don't organize shops -- that is a term -- that sounds like a CIO term to me. YOu know, we are a craft union, and usually we sign agreements with associations, and the agreements are -- our principal agreement which we call a sacred document, you know, we have had that going back to 1908. We have had contracts with the building contractors, you know, the building trades employers association, so it is contracts that we have had for years and years.

All they said was the same as we had years ago, too, that the men went to work for them , we had a contract with them, and after a certain amount of time that we expected the men to join our union.

Q Mr. Dalton, following the passage of the Civil Rights Act in 1964 were there any particular steps taken by the union to insure compliance with the Act?

A Well, our particular local, as I said, I don't think -- we did not think there was a thing in

the world that we would ever have to worry about, because going back personally fifty years, and people prior to that -- my father was in it and he had friends, minority people and all -- we never had that thought. We never thought we would be confronted with that.

There wasn't anything in the law that bothered us because we did it fair.

Q Were there any particular efforts made between 1964 and the present to recruit or train minority individuals?

A No, we don't -- that would apply to anybody, not minorities or majorities -- anybody. I mean, we never took it upon ourselves to train anybody due to the fact, as I testified before, that we do not have apprentice engineers in our local, and it never come up.

Q You relied, is it accurate to say, on Local 15 for new people?

MR. BRADY: Objection.

A I did not hear that.

MR. BRADY: Excuse me, your Honor. His testimony prior to that was entirely different.

THE COURT: Ask him, I don't think he said that.

MR. GLASSMAN: I will rephrase the question.

Q Is it accurate to say, then, that you relied, after 1954, on Local 15 or 15A to train most of your people for possible 14 equipment membership?

A Well, they certainly -- as I said before, that is the best place to learn how to be an operating engineer, no question about that.

MR. GLASSMAN: I have no further questions of this witness, your Honor.

THE COURT: Any questions, Mr. Kennedy?

MR. KENNEDY: No, your Honor.

MR. BRADY: No questions, your Honor.

THE COURT: Thank you. You are excused.

THE WITNESS: Thank you.

[The witness is excused.]

THE COURT: Well, it is time to adjourn. We will adjourn until tomorrow morning at 10:30.

THE CLERK: Court stands in recess until 10:30 a.m. tomorrow.

[Adjourned to Friday, September 20th, 1974 at 10:30 a.m.]

* * *

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William Wade	373	495		
Ralph Dalton	506			

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

- v s - 72 Civ. 2498

LOCAL 14 INTERNATIONAL UNION
OF OPERATING ENGINEERS, et al.

September 20,1974

10:30 a.m.

[Trial resumed.]

MR. DEVORKIN: Good morning, your Honor. I thought maybe we could just address ourselves to some housekeeping matters this morning.

As your Honor will recall, plaintiff offered and had received Exhibit 11 which was certain minutes of meetings of Local 15, both regular minutes and executive board minutes.

Mr. Brady pursuant to my request supplied me with additional minutes that we had not received before and I have gone through those and selected portions of those minutes that I would simply add to the collection that is Plaintiff's Exhibit 11.

THE COURT: Is that agreeable, Mr. Brady?

MR. BRADY: I haven't seen the portions. I did supply the minutes, I know they are authentic. As far as admissibility, that is another question.

But I mean is it agreeable to make them part

of the original exhibit?

MR. BRADY: Yes, sir.

MR. DEVORKIN: There is a designation in the cover sheet indicating which minutes they are. I hand up a copy to the Court.

MR. BRADY: Is that Exhibit 11A?

MR. DEVORKIN: No, just part of 11.

In addition, your Honor, we have gone through the minutes of the regular minutes of Local 14 supplied to us by the union which were stipulated to be authentic and have selected portions of those and offer those as Plaintiff's Exhibit 10. We offer them in evidence.

THE COURT: Membership meetings?

MR. DEVORKIN: Yes.

THE COURT: All right.

MR. KENNEDY: May I ask your Honor if he is also going to designate the portions that he is referring to, for the sake of rebuttal?

MR. DEVORKIN: There is an index as a cover sheet in that exhibit that sets it forth.

THE COURT: I take it that takes care of your problem?

MR. KENNEDY: Thank you, your Honor.

THE COURT: Received.

[Plaintiff's Exhibit 10 received in evidence.]

THE COURT: And the supplemental addition is received as Plaintiff's Exhibit 11.

MR. GLASSMAN: The plaintiff calls John Messinger.

J O H N J . M E S S I N G E R , called as a witness on behalf of plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Messinger, by whom are you employed?

A Local 14, International Union of Operating Engineers.

Q What capacity?

A Business agent.

Q Since when have you been a business agent?

A I am starting my seventh year this month.

Q How did you get the job as business agent?

A I was appointed by the business manager.

Q What is his name?

A Thomas J. Nolan.

Q Could you describe for us and the Court the difference between your duties as business agent and the

duties of other business agents?

MR. KENNEDY: Your Honor, may we have that clarified a little bit as to whether or not he is talking about his jurisdiction as business agent or his duties as such?

THE COURT: Let us find out his jurisdiction and his duties within that jurisdiction.

Q First, Mr. Messinger, would you describe for us your jurisdiction and how that relates to other business agents?

A Yes, sir. I cover Manhattan from 34th Street north on our heavy construction agreements and all of the Bronx.

I cover Manhattan from 59th Street north and all of the Bronx in the super structure agreements.

I also cover Welfare Island, now Roosevelt Island; Rikers Island; Harts Island, City Island. That is about it.

Q Do you have any different duties in your jurisdiction from other business agents in their respective jurisdictions?

A No, sir.

Q How long have you been at the trade?

A A total of about twenty two years.

Q What was your first job in the trade?

A I was a maintenance man, mechanic.

MR. KENNEDY: May we have some indication as to whether this is Local 14 or not?

Q I am talking about the trade, Mr. Messinger, in general terms I am talking about any operating engineers' work.

A Any operating engineers' work?

Q Correct.

That first job was not in Local 14, was it?

A No, sir.

Q How did you get your first job?

THE COURT: What was it in?

MR. GLASSMAN: That was in the previous question I asked.

THE WITNESS: Jurisdiction of the local, sir? It was Local 15C of the same International.

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Q Were you a member of the union at the time you got your first job, a member of 15-C?

A No, sir.

Q How did you get your first job?

A Well, I was working on the job as a mechanic, and the company went bankrupt, and I was going to be unemployed, as were several other engineers on the job who were working under the jurisdiction of Local 14, and I knew the men, having worked with them for a year or two, and they suggested that I go down to the offices of Local 15 because I was a mechanic,and talk to one of the officers of that local at the time, and he possibly mightbe able to help me.

I did go down. I did talk to these people and they said they would do what they could for me, and I went down again in about a few days and they sent me to a job as a mechanic, and after a short period of time, a few months -- about four or five months possibly -- they gave me a book in Local 15-C.

Q You said you knew the men who told you about Local 15-C before you went to the hall. You knew these men?

A Yes, sir.

Q How did you know these men?

A I worked on the job with them. I was a mechanic in charge of the maintenance of a truck fleet on the job -- it was sand and gravel and a concrete suppy yard, and they were employed in the capacity of engineers running cranes, unloading scows, brick barges.

Q And is it correct to say that you were doing maintenance work while you were working with them?

A Yes, sir.

Q What other experience, if any, did you have prior to joining Local 15-C?

A Prior to that I worked for the Autocar Truck Company for about three years, which followed my discharge from the Armed Services. I was in the Second World War for four years. During that time I served as a mechanic; I worked in a tank outfit.

When I came back from overseas I taught tank engines with the 39th Ordinance Company at the Aberdeen Proving Grounds.

Q Did your experience in the tank outfit prove useful to you?

A As a mechanic, it did.

Q In what year did you first join the local?

A In 1952.

Q What local was that?

A 15-C.

Q What type of work did you do while you were in 15-C?

A I was a maintenance man. I worked on engines, caterpillar tractors, diesel engines, gasoline engines -- maintenance of a general nature regarding all types of heavy construction equipment that were owned by a particular contractor, whoever I might happen to be working for at that particular time.

Q Were you ever working with 14 men at that time?

A On occasion, yes, sir.

Q Did the 14 men ever show you how to operate equipment?

A Yes, sir.

Q What type of equipment did they show you how to operate?

A Cranes, shovels, backhoes.

Q Could you describe for us in what ways you learned to operate cranes?

A Well, actually what transpired at the time was working as a mechanic and maintenance man it becomes necessary to understand a little bit more of the operation of the complete machinery if you are going to perform a particular maintenance job on that particular piece of machinery, and if an engineer called the maintenance shop for repair

work on his particular machine, he would naturally have a reason to complain that something was wrong, that it did not do what it was supposed to do,and it was quite common for him to go to the mechanic, the maintenance man, to explain to him what he thought was wrong with it, and to suggest to him what could possibly be done to correct it.

In most cases he knew pretty much what was going on, and then he would, in the course of conversation, many times he would explain to the mechanic -- he might be an engine mechanic working on the engine -- the complaint might be restricted to "I was lacking power," and he would say, "This is the reason I know it is lacking power. It doesn't lift what it should lift. I am having a problem" -- something like that; and he would show you exactly what was necessary to run the machine, and it was pretty interrelated, the maintenance of it and getting to know what happens when you actually push a clutch friction in and started to lift something -- lift a bucketful of material.

Q As a mechanic can you briefly describe to us when you operate the crane what kind of levers there are, how does it operate?

A Well, generally speaking, any crane has approxi-

mately the same amount of controls. Once the engine is in operation, there is a main or master clutch which is engaged, which starts all the machinery turning. Then you have, depending again on the drums -- the number of drums in operation on that particular machine -- you can have a holding line friction, a closing line friction, a boom hoist friction, a swing friction, a boom house -- a boom lock, a house lock, a throttle.

I would say that is approximately it -- oh, and of course the boom angle indicator, and now they have computers which testify as to the weight of the load being lifted. These are relatively new, in the last few years.

Q How many cranes are there in which a computer tells you the weight of the load to be lifted?

A The City of New York requires that -- they all have it, any lifting crane has it; and to give you an estimate, I would have to approximate it -- I would say there are several hundred so so equipped in the City.

Q How does a computer actually work, if you know?

A It works by stress on the load line.

Q Who operates the computer?

A It is automated. It is within full view of the operator, electronically -- and I really don't know

about electronics.

Q If there should be a problem with the computer who do they call?

A They have computer people that they call.

THE COURT: Does it just indicate the weights?

THE WITNESS: Yes, and the degree of angle of the boom, the radius.

Q If you look at the computer and it tells you the weight and the degree of angle, does that then tell you which lever to push?

A No, sir.

Q How do you respond to what the computer tells you?

A You relate the information that the computer gives to the capacity chart of that particular crane; it has to fall within certain limits. When the computer tells you you can lift 8 tons at a given radius of 78 feet, you then check your capacity and lifting chart, which is on the machine in a very noticeable area of the machine, and you compare it to see that you can in fact do what that computer tells you you are in a position to do.

Q If a member of Local 14 has not operated a crane or a computer before, how does he learn how to do that?

A Well, I would say -- and I don't want to be evasive, but only for the reason that I haven't run a crane with a computer. As I said earlier, they have only been in effect approximately three years -- four years maybe -- and when I stopped running them, it was six years ago, and at that point we only had boom angle indicators,which were not very sophisticated but very easily read and very accurate -- it worked for years. We never had problems with them.

I have seen these computers, and it is like reading the face of a clock -- it is very simple.

THE COURT: And if you can read it you can operate it?

THE WITNESS: Yes, I would say so without any difficulty.

Q Mr. Messinger, when is the first time that you actually got up on a crane and physically operated it?

A As a salaried licensed engineer?

Q No, just simply got up and operated it.

A In the shops I was involved on occasion -- we had to -- it was necessary when we were rebuilding, repairing them to engage some of the machinery to perform certain functions to see that it would work.

Q About how soon after --

A That would have been, I would say, '52 or '53 -- late '52 or '53.

Q About how soon after you joined Local 15-C did you have that opportunity?

A In about a year, I would say.

Q Did you learn to operate on actual construction work?

A No, sir.

Q How then did you learn how to operate it?

A That is where I got my experience, in the shops.

9/20
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Local 14

3 1 am

Q When did you join Local 14?

A About 1955 I believe, 1956.

Q Did you operate on a permit from Local 14 prior to being admitted?

A For a few months I did.

Q Does a non-member need a permit to operate Local 14 equipment?

A No formal permit as such, but there is a system we have where a man who is a licensed man can gain employment from a business agent just with the acknowledgment of the fact that he has a license and the fact that he has some experience and he is endeavoring to come into the local.

Q But does such a person need permission of some sort from the union?

A Yes, sir.

Q Could you describe how this system works?

A If you were to come before us, to our union hall and present your license to us, tell us you wanted to go to work, we will question you as to what you have done, that you do have a license, we would ask you what you can run, what kind of equipment can you handle.

If you could prove to us that you could do this, and we had the opportunity available, we would put you to

work.

Q What if a man comes into the hall who doesn't have a license but who says he can run certain 14 equipment, what do you tell him?

A If that equipment required a license we can put him on.

Q If it does not require a license.

A We could.

Q Would you put him on work?

A If the situation was such that we had nobody out of work, yes.

Q Is that the only situation in which you would put him to work?

A Yes, sir.

Q If you had other people out of work, would you put that kind of person on any kind of waiting list for work at all?

A Yes, sir.

Q How would you decide when he got a work assignment?

A Again, the work availability. If we are busy and there is equipment that needed to be manned that did not require a license, we would certainly give these men any chance we could. We have done it over the years.

Q If you had two people who were qualified to run a non-licensed piece of equipment and one was a union man and one not, would you give anyone preference?

A Yes, sir.

Q Which one?

A The union man.

Q In your years as business agent has the union been concerned about non-union contractors and non-union labor?

A Yes, sir.

Q Could you describe for us the type of concern you had about that problem?

MR. KENNEDY: I object at this time. I don't see any connection between this line of questioning and --

THE COURT: Well, I will take it, Mr. Kennedy. I assume it may have some connection.

A Will you repeat the question, please?

MR. GLASSMAN: Will you read the question, Mr. Reporter?

[Question read.]

Q Talking about non-union contractors and non-union labor.

A Right. Our very reason for living is jurisdiction, union contractors. Without them, we don't

exist. They have no agreements with us, the non-union contractors and, of course, we have to encourage people to sign up with us, in fact to get union agreements, and that is part of our job, to organize.

Q Do you know what percent of Local 14 type work in the City of New York is union work where the contractor has signed up?

A Is not union?

Q Is union work.

A Is union work. I would say 80% -- most all of the private work I would say is union work. The City of New York lets out some non-union work.

THE COURT: What type of work is this?

THE WITNESS: Mostly the renovation of particular neighborhoods, tenement buildings and work of that sort, painting contracts.

THE COURT: Where it is let out in the community?

THE WITNESS: Yes, sir.

Q Do you know if Local 14 has ever tried to put its men on this kind of City work?

A On occasion, without any success.

Q How have you attempted to put Local 14 men on those jobs?

A Just go to the contractor, tell them who we are,

ask them if they would employ union people and, in most cases -- in all cases they say no.

They say they are complying with the law, paying prevailing rates and wages and that is their limit of the obligation and that is the end of it.

Q Is the union concerned about or has it been concerned about jurisdictional problems on particular kinds of equipment?

A Yes, sir.

Q While you have been business agent?

A Yes, sir.

Q What kind of equipment has it had a particular problem with?

A Some small hoists, compressor work, welding machines.

Q Has a member ever instructed to attempt to protect the jurisdiction of the union in that equipment?

A Yes, we continually do that.

Q How do you do that?

A To protect the jurisdiction?

Q Of that smaller and lighter equipment.

A How would we instruct them to do that?

Q How would they do it?

A One way when they are on a particular job,

if they don't know the engineer personally, they might go up and ask in fact he is an engineer or a member of our local. If not, they would report it to the business agent.

Q And what would the business agent then do if it is reported?

A Well, go through the contractor, inform him that we have a binding agreement and that he is required to secure union people for the job.

THE COURT: Let me ask you this, this work you talked about, this 20% non-union labor primarily as you indicated are people in the community. Are these people black?

THE WITNESS: Sometimes.

THE COURT: Are they licensed?

THE WITNESS: In some instances they may be, but we really don't know.

I should correct that, it is not necessarily work that is only given out in the community. A lot of work is in the municipal buildings and in many instances it is not minority people that are used.

THE COURT: You mentioned buildings and some tenements. There is a preference given to people in the locality but I was wondering how they get licensed

people to operate heavy equipment on those projects. Perhaps they utilize people who are not licensed. That could be the case. I don't know.

THE WITNESS: I might illustrate, your Honor. They had a pilot project a couple of years ago which you might be familiar with.

They gutted the entire interior of buildings, tore the insides out and left the outside walls standing and dropped completed modular units into it to rebuild it. It wasn't very successful but at that time they had to use big cranes and did use our people on that part of the work, if that helps your Honor.

THE COURT: You were talking about using bull dozers and things of that type?

THE WITNESS: That is right, small hoists, compressor work and things like that.

BY MR. GLASSMAN:

Q On those types of jobs, Mr. Messinger, do you know if there were many minority people doing the work other than the initial crane work?

A It depended on the area.

Q Do you know if much of that work is done in black areas of the City?

A There is quite a bit of it going on right now,

Harlem, Bedford Stuyvesant, Southeast Bronx.

Q Do you know if any of the people who are working on such projects are black or Spanish?

A Some are.

Q Has Local 14 to your knowledge ever attempted to recruit or train such people working on those projects?

MR. KENNEDY: He just said they tried to organize them.

THE COURT: That is what I was coming back to. He just said that they attempted to organize them without any success.

Q Have your efforts in that respect been to talk generally to the contractor?

A And to the men, too, at times.

3.2am Q In your experience, Mr. Messinger, how do men usually get into Local 14?

A After having secured their license they appear and ask for an application. The application is filled out and on the application they are required to list their background, history as far as their birthdate and address and so on; what type of equipment they have run, how long they had their license, whether or not it is the original issue. The jobs that they worked on.

Because of our requirement of efficiency in

several types of equipment in order to gain entrance in our local and after having filled out that application, they are notified by our office as to when they can appear before an examining board which consists of engineers, lay members of the local and they examine the candidate's qualifications.

If after questioning they find this is the case as is stated, they then refer the candidate to the executive board and the board acts on the recommendation of the examining board and rarely if the examining board agrees that the candidate is qualified, does the executive board do anything but accept him and he is accepted.

Q In those cases where an individual is rejected, is he allowed to work on jobs?

A Yes, sir, in some cases, not in all cases.

In some cases if the man lacked sufficient time or sufficient expertise and wasn't really proficient enough, the employment record indicated the jobs were of extremely short duration and possibly he couldn't qualify, couldn't do the job right and the contractors discharged him regularly. We investigate things like that.

Q Would you give him a period of time when he

work in 14's jurisdiction?

A Yes, sir.

Q How long would that be?

A In ninety days and he can re-apply in ninety days.

Q Is the ninety-day period ever extended?

A Yes, sir, for another ninety if necessary.

Q In your experience is there any particular way in which men usually get experience for Local 14?

A Well, sir, it can happen many ways. It can happen in the area where our license wasn't required, it can happen out of our jurisdiction. It could happen as a result of transfers from a local in the surrounding area.

It could happen as a result of a man being a member of Local 15 working as an oiler or as a maintenance man, as was in my case. It could happen in many instances as a result of service connected jobs, Sea Bees, Army Corps of Engineers.

Q Would all of that kind of experience be given equal weight in the examining board?

A Yes, sir.

Q If a man got his experience solely in the New York City area, would it be fair to say that it would

pretty well have to be on the job training?

A I would say it would be fair to say that.

Q Would that on the job training have to be with Local 15 in the New York City area?

A To a degree, yes, but not entirely so.

Q What other training could he get in the New York City area?

A Well, as I pointed out, there are non-union contractors in this town. We have organized some people, quite a few, as a matter of fact, in our union.

Q Mr. Messinger, are you familiar with Local 14's re-training facility?

A Yes, sir.

Q Have you ever sent men there?

A Yes.

Q In what circumstances do you send people to that school?

A I beg your pardon?

Q In what circumstances do you send people to that school?

A The nature of our business is such that it is quite varied. The type of equipment that we maintain jurisdiction over relate directly to the type of construction, heavy construction as opposed to building

construction as opposed to steam machines, pile driving work.

Consequently, it is necessary for our people at times to brush up, get familiar with particular pieces of machinery they may not have been on for some time and maybe in fact have never been on.

So when the work cycle changes as we are in a period right now, our work cycle has gone to the point where the building line is extremely slow. We have very few new office buildings, housing type things starting. Those that are in progress now, when they finish, frankly, we don't know what we are going to do. We should have quite a bit of unemployment.

But fortunately, we have a good bit of heavy construction work with the subway program and the tunnel program and it is necessary at times for these people to get familiar with the machines that are used in that type of construction and, therefore, we just refer them out to the training ground and they take advantage of it.

Q What kind of equipment is used on that type of work that isn't used on the building work?

A Well, the very heart of the building job, most every type and piece of machinery could be used, not necessarily, but it could.

The excavation of a foundation, you could have a shovel doing the excavation. You could have a very, very shallow excavation which doesn't require a shovel, it could be done with a loader. You could have soft footing foundation, driving piles and after the foundation stage was completed, then you go into the erection of the building.

That could be, if it were a structural steel building on which there are very few today -- for the most part it is reinforced concrete -- but if it is structural steel you could use guy derricks and hoists, Chicago booms.

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Q Are there many Chicago booms being used right now?

A Not too many now. That is only as a direct result of the building being slow.

Q Is all the equipment you described earlier Local 14 equipment?

A Yes, sir.

Q What kind of loaders does 14 have in its jurisdiction?

A None other than shovels.

Q Other than what?

A Shovels.

Q Can you describe for us the procedures by which an individual would be referred to the re-training school?

A Well, an engineer would call up one of the business agents, and for whatever reason he might have, he might be looking for a new field of employment. Maybe he heard about a particular job that had a lot of pile-drivers on it -- it might be near his house, and he said, "Any chance of getting on the job? I would like to get on it, and I would like to get out to the school to see if I can get familiar with a pile rigging outfit" -- and he would call the school, and the fellow running the school out there would let him know about it and the engineer

would go out there.

Q Would the engineer generally ask a business agent to go to the school?

A I would say generally it would be the thing.

Q How does the engineer find out that the school exists?

A They are well aware of it. We talk about it a great deal. We have advocated that our members take advantage of the school for that purpose. We continually talk about it at our regular meetings. We have articles about the school quite regularly in our union publication, mailed to membership.

Q About how many people are in the school at any one time, if you know?

A We have, to my knowledge, three to four, possibly at times five, instructors, and I would say that in order to do any good at all a man has to have, you know, more or less individual attention. It would take a couple of hours for him each day to get any advantage at all, so I would say we limit it to five or six men at a time. They only do it on Saturdays, their off-time.

Q Is there any kind of waiting list?

A Could be, but not that I know of. It depends again, if you send three or four or five guys out there

and they just only need brushing up, they might pick it up quicker than a guy who hasn't seen that type of machine. He might take a little longer, and consequently it would back upon it.

Q Does an engineer who wants to go to school work out the schedule with the business agemt or the training engineer -- how does he do that?

A If he called the business agent, like I said, we refer him to the fellow running the school and he handles it from then on. If he is backlogged he would tell us. If not, he would go out on Saturday.

Q And would the individual engineer work it out with the engineer at the school?

A Yes, sir.

Q In your time as business agent with the union have there always been enough competent engineers available?

A Most times,yes, sir.

Q Have you ever had times when there weren't?

A Yes, sir.

Q What do you do in that case to fill the jobs?

A Sometimes we have to leave a job unmanned.

Q Does the union keep track of job information?

A Yes, sir.

Q How does it do that?

A We subscribe to publications that indicate to us when jobs are being bid and let out for contract. One of the publications is the Dodge Bulletin.

Q Do you ever get information directly from contractors?

A Yes, sir.

Q How often does that happen?

A Usually when it happens we know about it, because of the nature of the work when the job is being let out, they will talk about it for six months or a year sometimes before it actually comes into being. But on occasion a contractor might indicate that he is going to work on a particular section of a job, that he is going to bid on, so you anticipate that he is going to get it.

Q What do you do with the information when you get it?

A We store it, we hang on to it.

Q Where do you store it?

A In our heads mostly.

Q How do you use it?

A When a job --if a job is awarded to a particular contractor and he needs men, if he hasn't got his work force, he will call and we send the men out -- we dispatch men to the jobs.

Q Do you inform the membership at regular meetings of work that is coming up?

A Yes, sir, they would like to read about it.

Q Do you do that regularly?

A Yes, sir, part of a business agent's report.

Q When you say "report" you mean report out at general meetings?

A Yes, sir.

Q Mr. Messinger, do you personally spend any time in the union hall or day room?

A Yes, sir.

Q How much time do you spend there?

A About four hours a day, the early morning hours, from seven to about eleven.

Q Every day of the week?

A Five days a week.

Q Could you describe for us the procedures you use to refer people to work?

A You mean selecting a particular man for a job?

Q Yes.

A Well, if I have an order for a man, an engineer on the job, the first thing I inquire if the man if the man that is giving me the order, the contractor, what type of machine, doing what type of work. It is very necessary

to know this. Then if the man says, "I have a Link Belt crane with 160 feet on it" -- meaning the length of the boom -- "and I am going to pour concrete," I then look out and try to get a man who I know is capable and qualified to fill that job.

Q Do you know most of the men personally?

A I know a good many of them.

Q Is it correct to assume that all people cannot run all the equipment?

A I would say it is reasonable to assume that.

Q If people come into the hall within your jurisdiction do you have them sign up in any particular order?

A No, sir, not as a general rule we don't.

Q How about in times when there is unemployment?

A At that time we would.

Q What do you do?

A We have a pad, and one of the business agents will take what we call a list, and on the list we put down the name of the engineer, his telephone number. The reason we do that sometimes at night we will get calls -- a contractor calls at night to start a job the following day, and we call guys that we know can handle it.

Q Is there any particular order in which you list the people, such as first in the hall?

A Qualifications -- we try to do it that way. We have done it that way for years, if a man is qualified.

Q What if you get two people with the same qualifications, how do you decide?

A Flip a coin.

Q Do people indicate to you when they come into the hall the kind of equipment they would prefer to run?

A Some do.

Q Do you try to honor them?

A Yes, sir.

Q Is there any particular kind of work that people don't like?

A Hard work! I don't mean to be smart.

Q Any particular kind of work that is considered generally harder than others?

A Yes. I would think that some of the steel erection jobs I found to be pretty nerve-wracking.

Q Is there much of that going on right now?

A Very little.

Q How about tunnel work? Do people usually like tunnel work?

A No, sir.

Q Why not?

A Well, if you have ever worked in one -- I don't

know -- I have, it is too pleasant down there sometimes.

We have tunnels running 1000 feet below ground in the City. We are in progress right now building a tunnel for the water aqueduct from the North Bronx right through Bronx, Manhattan; crosses the East River in the 60's and heads for Welfare Island. There is a shaft on Welfare Island, and at that point I think it is 900 feet deep. It is going into Queens, and the conditions of the tunnel are not that nice -- the ventilation at best is poor, the lighting is poor. The element of danger is quite high. I believe on this job now, I think there have been 18 men killed in three years.

A tunnel that runs alongside of it was built in the 20's. We just talked to a business representative from the Sandhog Union a few months ago and he told me they uncovered records that showed on that job there were 100 people killed before it was completed.

It is not the nicest kind of work.

Q Would you tell us generally any particular manner in which the people have died -- accidents or sand flowing in?

A Falls in shafts have accounted for quite a few that I know of; a few blasting accidents. These tunnels are rock tunnels.

Q Have operating engineers been killed in those?

A Yes, sir.

Q Does the union expect that there will be a lot of tunnel work continuing in the future?

A The forecast is for quite a bit.

Q Is it accurate to say that tunnel work coming up may well take up some of the slack in the building trade for a while?

A We surely hope so.

Q What type of equipment is used by Local 14 men in the tunnel?

A Conway mucking machines; locomotives over 15 tons.

Q What does a locomotive do in a tunnel?

A A Conway mucker or a similar loading-type machine, after they drill and blast the rock, this machine goes into the heading -- it is a called the heading -- and loads the muck, the rock on to cars.

The locomotive hauls the cars to the shaft where it is hoisted to the surface and removed.

Q What other kind of equipment is used in the tunnel?

A Mine hoists, which are machines that lift the material. Any crane used is a mine hoist, which happens in a

lot of cases; a compressor houses high-pressure air -- jigh air; shield jacks.

Q What is a shield jack?

A Well, it's an air job. It would indicate -- in most cases it wouldn't be a rock tunnel -- the mud, the dirt, and itis done under compressor air, and the shield is hydraulically driven as it advances itself -- not by itself but by jacks, and those controls are located up on the surface. The hydraulic power is piped down the shaft, through the tunnel into the heading where the shield is located. It is quite a complicated piece of equipment.

Q That is all 14 equipment?

A Upstairs, yes.

Q In the tunnel.

A If it is compressor air it is ours. If it is, the tunnel men in the tunnel -- if it is a compressed air jack, they are members of Local 147, sandhogs.

Q All the other machines that you have described -- locomotives and compressors, is that Local 14 equipment?

A Yes, sir.

Q Has tunnel work always been Local 14 work?

A Yes, sir. That goes back for years. We share it jointly with Local 15, some of them.

Q Would you describe for us in what ways you share it with Local 15?

A Local 15 does the maintenance of the tunnel. Local 15 maintenance has jurisdiction on a lot of the smaller loaders, on the locomotives lower than 15 tons. They work with an engineer on a mine hoist, or a crane has an oiler. They work on a compressor house -- a compressor plant has an oiler, and a few machines known as cherrypickers on the surface -- that is the jurisdiction of Local 15.

Q Mr. Messinger, about how many men do you have working in your jurisdictional area?

A At the present time?

Q Yes.

A I would say right now about 400, 450. It can vary from day to day.

Q Do you know about how many black or Spanish men you have working in your jurisdiction?

A 15 or 20 possibly.

Q Are there any particular jobs within your jurisdiction that have a lotof blacks working on them?

A I wouldn't say any particular jobs. There are some jobs that have them; some don't.

Q Can you have as many as four or five on a

particular job?

A Just one job I know there may be even more than five. It is a large job.

Q Which job is that?

A The pollution plant on the North River.

Q Who is the contractor?

A Perrina.

Q Do you know about how many blacks or Spanish people might be on that job?

A Of Local 14?

Q Yes.

A Maybe seven or eight.

Q Do you know about how many total Local 14 men might be on that job?

A I think we have 60. It is a two-shift job. It works from seven in the morning to eleven at night.

Q People on the night shift get paid any more than the day shift?

A No, sir, not under those situations.

Q Do you know if that job involves any government contracts?

A That is government money.

Q Do you know if that job has ever been visited by a government contract compliance officer?

A Yes, sir.

Q Mr. Messinger, are you familiar with the New York City Building Trades Council?

A Yes, sir. I am a seated delegate on that Council.

Q How long have you been a seated delegate?

A Six years.

Q Do you know if they have ever had discussions regarding the employment of minority workers on construction jobs?

A Yes, sir.

MR. KENNEDY: Your Honor, I am going to object to this line of testimony for the record, on the ground that the Building Trades Council is not Local 14.

THE COURT: Well, I will take it for what it is worth.

Q Have you ever reported to the general membership of Local 14 regarding meetings with the Building Trades Council, if you know?

A Yes, sir.

Q Do you recall any meetings with the Building Trades Council regarding new regulations on construction jobs requiring minority workers?

A No, sir.

Q Were you ever personally aware of new regulations in or around the end of 1968?

A The information that I have and have been receiving that comes to us through the Board of Urban Affairs and from the Office of Compliance of the City of New York, they indicate by letter to the business agent when the job is in a particular territory, they go to that business agent by letter and let them know that under the law a percentage of minorities required on the job, and we comply.

Q How do you comply with that?

A By manning the job with minority members.

Q How many such requests have you had?

A Since 1968?

Q Has it been frequent since 1968?

A Most every job that comes out we receive those letters.

Q Do those letters request any particular number of minorities?

A Yes.

Q And has Local 14 always been able to supply those numbers?

A We have never been in default.

Q Do you know what percentage of minorities those

contract compliance people have required on the jobs?

A It depends who is requesting it. The City says one thing. The Federal Government will say another thing at times.

Q What has the City requested?

A They have set one in four for a long period of time. I understand that has been reversed now.

Q For how long have they been requesting one in four now?

A For several years.

Q Whenever that was requested did the unionsupply that number of people?

A We did the best we could at all times.

Q Have you or the union ever felt that Government regulations in this respect for hiring minorities posed any kinds of hazards for the building trades?

MR. KENNEDY: I object to the form of the question.

THE COURT: What do you mean, safety?

MR. GLASS: Hazards of any sort, your Honor.

THE COURT: I will take it for what it is worth.

MR. KENNEDY: I still object to the form.

A If a man was licensed, qualified, the hazard is removed as far as my personal feelings.

Q Has there been any particular problems the union faced on contracts where the City of New York was the prime contractor?

A None that stands out in my mind.

Q When Local 14 organizes people into the union, how do they decide if the people are qualified men?

MR. KENNEDY: Your Honor, may we have the clarification as to whether he is talking about 14 or 14B insofar as organizing?

Q Has Local 14 organized men in or only 14B organized men in?

A On occasion we have taken men into Local 14 if they are qualified and licensed and they would receive

the same processing procedure as anybody else. They would go before the examining board and the executive board.

Q How about when people were organized in 14B?

A Those people for the most part, with rare exception, have been organized after having worked for a good period of time for a particular owner or contractor and if they weren't qualified, couldn't perform the operation they were hired for, they wouldn't be working, and we have organized those people many, many times, scrap yards.

Q Is it fair to say for those kinds of people you rely on the employer and if he feels the man is qualified then you take them in?

A We check and see what they are doing. We know the machine they are running and in many instances it is identical to the machines that would be out in the construction job.

THE COURT: They don't present a hazard to the public like somebody working on the outside?

THE WITNESS: That is right.

MR. GLASSMAN: I have no further questions of this witness.

THE COURT: Do you have any questions?

MR. KENNEDY: Just a few, your Honor.

THE COURT: How about you?

MR. BRADY: I have no questions.

THE COURT: Well, go ahead, Mr. Kennedy, and then we will take the recess.

MR. KENNEDY: Fine, your Honor.

***

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Messinger, you have been in Local 14 since 1955 or 1956; is that correct?

A Yes, sir.

Q You have been on the executive board?

A Yes, sir.

Q How many years?

A Six years.

Q Have you been on the examining board?

A No, sir.

Q In the time that you have been in Local 14, do you know whether or not a black or Hispanic has ever been refused membership in Local 14?

A No, sir.

Q Can you tell us whether or not a black or Hispanic has ever been refused a transfer from any of the locals providing he has a license?

A No, sir, providing he had a license, no.

Q Now, on the re-training school you were asked certain questions. Could you tell us to the best of your knowledge when that re-training school was put into effect?

A Approximately four years ago I would say.

Q Who attends that school, sir?

A Members of Local 14, 14B.

Q What was the purpose of that school?

A To round out their skills, to enable the members to advance from one machine to another and put more tools in their tool box.

Q Has the technological aspects of the machinery increased or decreased since you came into the union?

A It has increased. We have machines now that we never had even seven or eight years ago. Hydraulics have taken a big part.

Q Prior to, let us say, 1970, had your members tended to specialize in perhaps one piece of equipment or two pieces of equipment? Has that been your experience?

A That happened.

Q Has it been your experience as business agent to find that during certain times of the year, pieces of

equipment of any particular job, there might be no need for at all?

A We are in a period like that right now.

Q And the purpose of the re-training school was to simply give added dimension to the member, isn't that correct?

A That is right.

Q Do you have any policy with respect to 14B men and that school?

A Yes, sir.

Q What is it?

A When they are entered into Local 14 we instruct them that to secure their licenses as quickly as possible and to take advantage of our training and re-training program out at the school, and many of them do.

Q Now, that is to assist them in obtaining their license, isn't that correct?

A That is right.

Q Can a licensed engineer make more money than a 14B man?

A Yes.

Q If a 14B man works 52 weeks and a 14 man works on the highest paid job for eight months, who would make more money at the end of the year?

A The 14B man.

Q But if the licensed engineer worked for 52 weeks and say, even at the lowest denominated equipment, would he make more or less than the 14B man working 52 weeks?

A He would make more.

Q You were asked about the tunnel work and were talking about the Perini job. Is that the same as the water tunnel contracting?

A No, that is a pollution plant.

Q What is the water tunnel contracting job?

A What is the job?

Q Yes, sir.

A That is the water aqueduct that I discussed.

Q Is that a tunnel, sir?

A Yes.

Q Do you have black 14 men down there?

A Yes, sir.

Q Do you have black permit men down there?

A Yes, sir.

Q Do you have whites down there?

A Yes, sir.

Q Do you have any other minorities, Spanish or otherwise, down there?

A They have a couple of, I believe, Spanish surnames. I am not too sure, whether Puerto Rican or what, but they are there.

Q While on the subject of permit men I want to clear up a few things. What are the occasions that you issue the so-called permit? You have stated it is an oral permit, is that correct?

A Right.

Q Under what circumstances do you issue that permit?

A Our work was such that we had no men out of work and then we had a call for a job and we had men in the hall, permit men with a license, we would send them out.

Q What about if the permit man didn't have a license and no book and there was work available?

A We would then try to put him on the job that didn't require a license.

Q Do you have such permit men working for you now, sir?

A Yes, sir.

Q Where?

A In the tunnel.

Q What are they doing, sir?

A Running locomotives, operating them and on Conways, too.

Q Do those pieces of equipment in the tunnel require a license?

A No, sir.

Q Outside of the tunnel work, do you have jurisdiction over locomotives?

A No, sir.

Q Do you use a Conway mucking machine in any place other than in a tunnel?

A It is designed strictly for a tunnel.

Q I want to ask you a few questions about your experience. I believe you testified that your jurisdiction really is heavy construction and certain areas, super structures ?

A That is right.

Q In your particular area with respect to heavy construction, any one particular job or a generalization, whatever is comfortable for you, tell us what you are doing.

What pieces of equipment are used in heavy construction on any particular type of job?

A Let us take a building. There is a job going up at 68th Street and Lexington Avenue in the foundation

5.2am

stage right now.

There is a compressor there supplying air for drills, it is a rock job. There is a load there, I believe a backhoe, a big backhoe and there may be a shovel coming in next week.

I understand they are going to go down about eighty feet below street level, it would be a deep job. We will run the compressor, the hoe, the shovel and then after the piers and foundations are reached and the piers poured, there will then -- I believe it is a reinforced concrete job -- cranes will be brought in and we operate the cranes and after the concrete is finished, the structural concrete, the hoists will come into play, maybe two or three hoists on this job, it is a big job. We could have a Chicago boom, we don't know for sure. It could happen.

That would be about the extent of the job.

Q What would be the total number of pieces of equipment that would be utilized on the job, one, two, three, twenty?

A I would say on that job a dozen.

Q How many of those pieces of equipment would be licensed equipment?

A I would say everything but the compressor and

the backhoe.

Q How many compressors would you have on a job like that, sir?

A One.

Q How many backhoes, sir?

A One.

Q And the rate of pay, is the licensed equipment higher than the unlicensed equipment?

A Yes, sir.

Q What would be the percentage of licensed equipment to unlicensed equipment in heavy construction?

A About 10 to 1.

Q Would this be the same as super structure work?

A Yes, sir, the same principles apply from the foundation up.

Q If I asked you the same questions about the rates of pay and licensed equipment and unlicensed equipment, would your answer be the same?

A I would say so.

Q In your experience with the day room, in good times, how many calls per week would a business agent get from contractors?

A Per week, total business agents?

Q Yes, sir.

A About 70 to 80.

Q What about in bad times?

A You don't get any.

Q Would the type of equipment that was to be operated pursuant to those calls, would it be licensed or unlicensed equipment?

A I'm sorry, I don't understand your question.

Q You told us that contractors call the business agent on the phone.

A Right.

Q He says I need an operator to operate a particular type of equipment.

Are you able to tell us what the percentage of equipment the contractors would call for would be licensed equipment or unlicensed equipment?

A Yes. I would say licensed equipment.

Q What percentage, sir?

A The percentage runs about the same all the time. The degree of work requiring a license I would say is 10 to 1. That is our living, licensed equipment.

Q Where do most of your members find work, Mr. Messinger, through the day room?

A No, sir.

Q Where do they find it?

A From having worked for an employer over a period of years, having done a good job for him, they establish a relationship. They go from job to job with him.

Q What percentage of your local appears in the day room during the course of a year?

A I would say the same two or three hundred men every day.

Q What is the total work force of Local 14?

A It varies up and down. It runs between 900 to 1,000.

MR. KENNEDY: I have no further questions.

MR. GLASSMAN: I have a few questions but perhaps I can wait.

THE COURT: Maybe we'd better take our recess.

[Recess.]

kp1 Messinger-redirect

T6

MR. GLASSMAN: May I proceed, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Messinger, I believe on cross-examination you mentioned there are certain kinds of equipment on which there is no need for a man right now. What kind of equipment would that be?

A Well, that is not my answer -- it shouldn't indicate that there is absolutely no need but the need is greatly reduced.

Q What piece of equipment would that be?

A Hoists and derricks; concrete buckets, concrete hoists; long boom cranes, Chicago booms.

This is a result of the building line being slow.

Q Mr. Messinger, are Local 15 men ever allowed to use the Local 14 re-training facility?

A Not to my knowledge.

Q Are permit men working under Local 14's jurisdiction ever allowed to use Local 14's re-training facility?

A Again not to my knowledge.

Q About how many people do you have personally working in tunnels under your jurisdiction at the present time?

A I have to stop and think a minute. Tunnels have shifts -- they are working around the clock, three shifts. I would say 200 -- no, I would check that. I would say 150.

Q Do you know about how many men there are working in tunnels in the entire City of New York under Local 14's jurisdiction right now?

A Maybe 200 altogether.

Q On cross-examination I believe you stated that there were some black permit men presently working in the tunnel under Local 14's jurisdiction?

A Yes.

Q Can you name them for us?

A One fellow named Earl Flythe; a man named Danvers -- I don't know his first name; a fellow named Gary Lighter, and there is one more -- I can't think of his name right now. He is working on the High Bridge job. I am sorry, I can't remember the name of the other one but I know there is one more.

Q Do you know on what particular jobs these men are working?

A They are working on running locomotives.

Q For what contractor?

A Water Tunnel Contractors -- that is the name

of the job.

Q Is that the name of the contractor?

A The name of the job. It is a venture -- it is a group of contractors. It is a joint venture job.

Q Do you know the name of the contractor?

A Water Tunnel Contractors.

Q Do you know where they are located?

A Their main office is at 205th Street and Broadway, Manhattan.

Q Do you know on what job sites?

A The job site location?

Q Where these men are actually located?

A What do you mean, these black men?

Q Yes, sir.

A They could be either in several shafts. They could be working at the High Bridge site, which is the Harlem River and High Bridge. They could be at Welfare Island, which is the shaft on Welfare Island. That is the entrance to the tunnel, down the shafts. The tunnel is now about seven miles long, so, you know, depending on how they move.

Q Do you know how long these black men have been working on permit?

A I'd say since the job started, a couple of them.

Q How long is that?

A Three years, going into the third year.

Q And they have been on permit for that entire length of time?

A Yes, sir.

MR. GLASSMAN: I have no further questions of this witness.

MR. KENNEDY: Nothing further.

THE COURT: You are excused. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. GLASSMAN: The government calls Everett Broderick.

EVERETT BRODERICK, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Broderick, how are you employed?

A You will have to speak a little louder, I am a little deaf.

Q How are you employed now?

A I am business agent for Local 14.

Q And how long have you been a business agent?

A Approximately 12 years.

Q What jurisdiction do you cover?

A Staten Island.

Q About how many people do you have working for you in Staten Island at the present time?

A At the present time I would guess 50 to 60.

Q Is business a little slow right now?

A Yes, it is.

Q When business is good about how many people do you have working for you in Staten Island?

A Between 75 and 100.

Q What type of work is performed in your jurisdiction?

A In my jurisdiction I cover both superstructure and heavy construction.

Q Are there sewer jobs going on right now in Staten Island?

A Are there fewer jobs?

Q Sewer jobs.

A Sewer jobs, yes.

Q Is there road paving and road-widening going on?

A No, the road-widening is about completed. The sewage lines from the North Shore is still in progress, and there is two pollution plants that are being rebuilt.

Q Are there any well point jobs in your jurisdiction?

A Yes, there are two of them.

Q What does a Local 14 man do on a well point job?

A A Local 14 man is in charge of the system. It is his responsibility to see that the system functions properly, that the pumps are in proper order and maintained properly.

Q Does he work with Local 15 men on well point jobs?

A There is one Local 15 man employed five days a week on one shift. Unless it is a system more sophisticated than a simple well point system, then Local 15 has their

own specifications for manning that type of system.

Q Do you know what Local 15 men do on these well point jobs?

A On the straight system he is the maintenance foreman. When you get into a more complicated system they have their own maintenance men. What their actual duties are I am not sure.

Q You say the road-widening job is winding down now. About how long was that job?

A How long did that job take?

Q Yes.

A Well, that job took better than a year because of complications with utilities, and I would say the job is now 98 per cent completed.

Q Have there been road-widening jobs before that in your jurisdiction?

A Yes. A section on Richmond Avenue, and it is contemplated that there will be more road-widening but at the present time Richmond Avenue is the only road-widening job that I know of on the Island.

Q You said you are contemplating more road-widening work?

A According to the paper and the Borough President, yes, there will be more road-widening.

Q What kind of equipment do you use on road-widening work?

A 14's equipment?

Q Yes.

A Usually backhoes and cranes to move utilities and reroute water lines and sewers; and then our next step is probably the paving crews.

Q On a road-widening job, about how many pieces of each type of Local 14 equipment might be used?

A On a reasonable size job, which is the one you have reference to on Clove Road, which was probably 20 City blocks long -- I think at the peak it was 3 14 men actually operating digging machines; and of course when the ashpalt group comes in, that could be four or five operating engineers, but they are usually there for a short period of time -- two or three days at the most.

Q When you say "the asphalt" crew, are those 14 men?

A Yes, sir.

Q Excuse me, Local 14 men?

A Yes, sir.

Q What does a Local 14 man working with an asphalt crew actually do?

A He is the spreader operator and the roller

operator.

Q What kind of equipment is used on the sewer jobs?

A Sewer jobs are usually backhoes and cranes. The two main sewer jobs in Staten Island right now are tunnel jobs, which are entirely different from ordinary sewers.

Q What kind of equipment do you use on those jobs?

A They are using, because of the small size of the tunnel -- the confinement -- they are using what they call moles, which have been designed and contracted for specifically for these jobs.

Q Do they mole new pieces of equipment?

A Not primarily, no, sir, but it is a development of or a refinement of a larger piece of equipment. This particular tunnel job we are talking about is within a 10-foot radius.

Q Could you describe for us the operation of a mole?

A On the Island you have two different manufacturers -- primarily their work is the same -- they carry the shield with them. There is a conveyor belt. There is a ring that pushes. The operator digs. He has two,

or sometimes three attachments that work within this 10-foot circle -- a backhoe bucket or a pick. He excavates the material and he loads, if possible, on to the conveyor belt, and that goes back and is dumped in muck cars, which is then disposed of.

They then push that hydraulic jack and insert another section which is usually 4 foot and start the same procedure over again.

Q If a man has never operated that kind of equipment before how do you select who to send out on that job?

A Well, on this particular job I went to the contractor, looked at a mock-up and saw that although the action of the machine wasn't the same, the controls of the machine were primarily the same as on the hydraulic hoe, so I made sure that the people I put in there were familiar with the controls on the hydraulic hoe.

Q When you send a man out on a job like that, does he learn that particular piece of equipment on the job or does he get any other training?

A No, these particular people get their experience, to my knowledge, when they indicated that they were willing to do that type of work. Then they got that knowledge primarily on their own through people they knew, or possibly

some contractor that would allow them to practice on this machine on a Saturday, and then they come back and said they believed they were proficient and could operate the machine.

Q Mr. Broderick, how did you get your first experience working in the Operating Engineers trade?

A Do you mean how did I get into the trade or my first experience?

Q Your first experience.

A Well, my first experience I was firing on a shovel, and the operator explained the workings of the mechanism so that I could move the machinery in order to grease and lubricate it.

Q Were you a member of any local at that time?

A At that time I was a member of Local 15, or about to become a member.

If you go back to the first month or two, I wasn't a member, no, but I had applied for membership.

Q Did you later transfer into Local 14?

A Yes, sir, I did.

Q When was that?

A About 1937, I believe -- I am sorry, about 1939. '37 I went into 15. About 1939 I transferred to 14.

Q Did you know how to operate a crane at that time?

A When I transferred into 14?

Q Yes.

A Yes, I did.

Q How did you learn?

A I learned by observing the operators that I fired and oiled for, and then I learned because I met a gentleman that took a personal interest in me and he showed me how to operate a shovel.

Q Have you ever personally run long boom cranes?

A You would have to define "long boom."

Q What is the longest boom crane you have ever run?

A 200 foot.

Q When is the last time you operated that size boom?

A Are you talking about for pay or just to run, or just to get on to see what the controls are?

Q No, when is the last time -- not the first time. When is the last time you operated that?

A Just to sit in the seat and make the machine move?

Q For pay.

A For pay?

Q Yes.

A About 14 years ago.

Q Any particular reason you stopped working on that type of equipment?

A The long boom cranes, I think, what we are talking about here, I worked in the business when long boom cranes were about 120 foot, and I found that I wasn't happy in that work so I went back to heavy construction work.

Q Any particular reasons you weren't happy in that kind of work?

A The responsibility was too great for me to enjoy my work.

Q How did you go about changing and working on other equipment?

A I just went and looked for a job in heavy construction. Fortunately I was a good shovel runner, and there weren't too many of them around, so employment to me was relatively easy. I could not only run a shovel, I could run the majority of the rest of the equipment that was used in heavy construction.

Q And can you tell us why did you like heavy construction more?

A It's -- mentally it's not as demanding. I have a tendency -- I have an imagination and I can visualize what could happen if an accident did happen, and on

building work I found that this was a hindrance, maybe, to my efficiency.

Q Mr. Broderick, are you a member of Local 14's executive board?

A Yes, I am.

Q How long have you been a member?

A I think about 14 years.

I have a bad memory for years, but approximately 14.

Q What are your duties as a member of the executive board?

A The executive board in general makes the policy of the local, under the proper guidance of the constitution and by-laws, and I vote as any other member of the executive board.

Q In the last 10 years have there been any changes in the policy of Local 14 regarding who they are going to admit as members?

A No significant changes that I know of.

Q Mr. Broderick, do you personally spend time in the union's hall or day room?

A Yes, sir, I do.

Q And do you go there every day?

A Yes.

Q What procedures do you use for referring men to work.

A Primarily their qualification is the only standard that I have. If a man is licensed and qualified to do the work, why, I send him out to work.

Q And do you have any kind of a first-in, first-out system if there are a lot of men coming in?

A No, because there are too many areas and too many different skills required, in my opinion, to work on that basis.

Q Do you ever get two or three people with the same qualifications wanting the same job?

A Occasionally, when things are slow.

Q How do you decide to send out?

A Usually the engineers are able to decide it amongst themselves, but if they cannot, then you take the location of the job and where the engineers live, and actually then consider who has been out of work the longest, and provided they are all equally qualified, then you have to make a decision.

Q Do you usually try to get a guy a job near where he lives?

A Yes. The closer to that, the less travelling he does, the less time he puts in.

Q Do you find that most people prefer to work near where they live?

A Yes, they do.

Q Are there any particular kinds of jobs that you find the men don't want?

A No, you can't lump all men in that category. Some men don't want particular kinds of work, and others might prefer the same type of work.

I just thought of an example -- one of the older men, a man I would say more than 55 years of age, went on a well point system, which is a job that isn't very demanding physically, and stayed there about two weeks and said, "I want to go back running cranes."

Q Any other kinds of jobs that more frequently men prefer not to take?

A Digging jobs in tight sewer which is tedious; working with sheathing with men under the bucket; working with signal men. It makes your job a little more demanding.

Q What kind of equipment requires signal men?

A You require a signal man when your work isn't in the open, when it isn't absolutely within your view and then if you are working with various trades, whether the work is within your view or not, you need a signal man. An iron worker is an example.

Q Who gives the signals?

A Usually a member of the trade that you are working with or if there is no trade, talking about sewer work, it would probably be a laborer.

Q If a man had been rejected by the examining committee as not having enough experience, can he sit in the hall and be referred to a job?

A Yes, sir.

Q What type of work would you refer him to?

A Personally I would try to find out either where the man's weakness is or his ability lies and see if I could put him on a job that would do him the most

good.

Q When you say do him the most good, what are you talking about?

A A man might be proficient in backhoe work and not too proficient in clam shell work and if I had the right clam shell job or knew that he wasn't going to be working around men and he could cause very little if any damage if he did make a slight mistake, I would try to put him in that job so he would be more proficient on the clam shell.

Q Do you attend the general meetings of Local 14?

A Yes, I do.

Q Do you report at those meetings on the prospects for employment, proposed construction work?

A Yes, if it is of any importance. I don't say I report every small sewer job or housing job that starts but in general, yes, I report the work in the future and in progress.

Q In your experience in the hall, have you seen many black men from the Carribean come in who are looking for work?

A I have seen some.

Q How do you recognize where they come from?

A Well, from someone in the islands, you can

usually recognize them by their British accent. We have a few of them come in. They usually have a little different tone of voice, use language a little differently than native New Yorkers do.

Q Who do you refer them to?

A Refer them to in what sense?

Q For work.

A They come to us looking for work and what we try to do is find out the area of work that they have reference to, whether it is 14's jurisdiction or in that particular hall, if it would be 15's jurisdiction.

Q Do you usually refer them to Local 15?

A Not if they are qualified on our work we don't refer them to 15. If they claim to be qualified on 15's work, then we refer them to 15.

Q Do you usually find them to be qualified on your work?

A No, but occasionally we do.

Q Are you familiar with the training they get in the islands?

A I am familiar with some of the training they claim to get in the islands. We don't have too many, I can only think of two or three of the operators that have come here from the islands that said they were crane

operators or dragline operators.

Most of them are pan operators, bull dozer operators, which is not in our jurisdiction.

MR. GLASSMAN: I have no further questions of this witness, your Honor.

MR. KENNEDY: May I have a moment, your Honor?

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Broderick, you have been a member of Local 14 since 1939 approximately?

A Yes, approximately.

Q When you became a member were there black members of Local 14?

A Yes, sir.

Q Is there any occasion that you can recall when a black man was ever rejected for membership by Local 14?

A No, sir.

Q Can you recall occasions between 1939 and 1974 when black men were admitted to membership in Local 14?

A Yes.

Q Do you ever recall any occasion where a black man was denied the right to transfer into the local?

A No.

Q Do you recall any occasion where a black man was ever expelled from the union while you were a member?

A No.

Q If I asked you those same questions with respect to Hispanics would your same answers be true, sir?

A Yes.

MR. KENNEDY: I have no further questions.

MR. BRADY: No questions, your Honor.

THE COURT: You are excused.

[Witness excused.]

THE COURT: We will adjourn until two o'clock.

[Luncheon recess taken until two p.m.]

1.1pm

A F T E R N O O N S E S S I O N

[2:00 p.m.]

MR. GLASSMAN: The Government calls Edward Murphy.

E D W A R D M U R P H Y , called as a witness in behalf of the plaintiff, after having been first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Murphy, how are you employed?

A I am an operating engineer.

Q Are you an officer of any local union?

A No, sir.

Q What local are you working for presently?

A I am a member of Local 14.

Q Have you ever been an officer of Local 14?

A Yes, I was.

Q And what office did you hold?

A I was a member of the executive board and a business agent.

Q And how long were you a business agent?

A Oh, roughly about four years.

Q Starting when and ending when?

A About 1970.

Q And when did you precisely in -- what date did your term as business agent end?

A Around May of this year; for reasons of health I resigned.

Q How did you first learn the operating engineers' trade?

A Well, my father was an organizer for the operating engineers, and I more or less grew up with it. I used to tag around with him when I was a boy, and I became familiar with the equipment that he would be trying to organize into this charter that he had. Then I picked up additional experience in the Army, and by going out with people I knew I became somewhat proficient in the operation of this equipment.

Q What kind of experience did you obtain in the Army?

A I was in a port battalion, and we operated winches from decks of ships; on these English coastal vessels during the invasion; we operated cranes on shore, overseas, we operated cranes, hydraulic tower cranes that would resemble those today. That is all.

Q When did you get into Local 14?

A Approximately 1948.

Q Were you sponsored for membership?

A Yes, sir.

Q Do you remember who sponsored you?

A Willie Sullivan is one, and Bill -- gee, I just can't remember Bill's last name. He died some years ago, and I can't recall his name at the moment.

Q How did you know those individuals?

A They were friends of my father's. I knew them for many years prior to that. I had visited with them. They had visited in our home, and they knew me from a very early age, and they observed me as I was moving around and learning how to operate equipment.

Q Was your experience in the Army useful when you later came back to the States?

A I think very useful.

Q Can you describe the similarity in equipment for us?

A Between what, sir?

Q Between the Army equipment and the equipment you found when you worked for Local 14.

A Well, they had in common that they were all used to hoisting materials. Generally the fact that you had the same sort of controls on most of the machines I operated in the Army, and generally what I came in contact with, when I got into the engineers, they were

cranes, hoists, winches, and they were all peforming the same function.

Q What is the first job you got sent on by Local 14?

A Operating a hod hoist.

Q Would you describe what that is.

A A hod hoist is an outside machine that lifts the materials to the floor where the workmen take it and use it for purposes of installation -- brick, for instance, concrete.

Q Have you ever been sent out on a cherrypicker by Local 14?

A I have worked on cherrypickers. I may not have been sent out by Local 14. We are able to get our own work, and I must have been on cherrypickers back through the years.

Q You have worked on cherrypickers under Local 14's jurisdiction?

A Yes.

Q If you could not find a job by yourself, how would you find a job?

A If I couldn't find a job on my own I would then go to the union hall. I would make my presence known. I would take a seat and wait for a job opportunity

to be given to me.

Q As a business agent of Local 14 did you spend time in the hall?

A Yes, sir.

Q Do you know if the men who were out of work come physically into the hall?

A Yes, they do.

Q Do they all come in or can they call the business agent as well?

A You have the majority of them coming into the hall. Occasionally you will get a call from an engineer who will say that it is getting rather late in the morning, he just got off the train, is there anything that he could possibly go to work on that day.

Q Were there any particular procedures that you used in terms of the order of referring a man out of the hall?

A Well, we tried to send the fellow out that has been sitting there longest, if he is qualified to do the particular job that you might have. A lot of fellows don't care for one particular end of the work; they would rather be on another, or they don't like this particular kind of machine, they would rather be on another. They don't like this contractor; they would

rather work for somebody else, and you come, after awhile, to know their individual eccentricities, you might say, and their wait -- you might send one fellow out who has not been waiting as long because he is more amenable to that particular situation.

Q What is your experience as to particular kinds of equipment that men prefer not to be sent out on?

A I don't know if there is any piece of equipment that one could single out that no one wants to operate. Everybody has their particular likes and dislikes.

You will find some fellows who like a job that is rather busy, hard, keeps them involved until the day is over. Other fellows just don't care for work and would rather be sitting on a compressor or something like that.

Q When you were business agent, what was your jurisdictional area?

A I had building work from 59th Street to the Battery and in Brooklyn.

Q About how many men did you have in your jurisdiction at one time?

A In New York I would say on any given day probably 200, 250 jobs on building work. That is in busy times.

At the present time building work is rather slow and, therefore, there are not that many jobs at one time.

Q How many individuals were actually working for you at any one time?

A I would say the same figures would apply.

Q The number of jobs that you just cited, is that in all of New York City?

A In my territory, from 59th Street to the Battery and through Brooklyn.

Q At any time do you know approximately how many blacks or Spanish surnamed individuals who were working under your jurisdiction?

A No, I wouldn't, sir.

Q The hall which you used is shared with Local 15, is that not correct?

A That is right.

Q Is that particularly convenient or why is that practice used, if you know?

A I imagine in the beginning it must have been as a matter of convenience inasmuch as there are so many particular types of equipment that we man together.

If you get a call for a crane it will require a 15 man and a 14 man, Local 15 and Local 14 -- Therefore, rather than one union being on the west side and the other on the east side, they probably came to think it was wise to congregate together and if there was any particular bit of information that we had to exchange to each other relating to a job, it would be

easier when we were all sitting around a common table.

Q Do Local 14 business agents and Local 15 business representatives frequently discuss jobs with each other?

A Oh, yes.

Q In your experience operating cranes have you ever been asked by an oiler or maintenance man to be taught to operate a crane?

A Yes, that has happened. I imagine it happened to all of us at one time or another.

Some fellow would ask you could you show him how the machine operates, he might be going to take his license test and you might spend a lunch hour with him, maybe stay after work with him and you would be as helpful as you possibly could because we have a tradition of trying to help each other and a lot of people have helped me so I would try and help someone else in turn.

Q Have you ever helped anyone prepare for a licensing test?

A I don't believe so.

MR. KENNEDY: Do you mean by that last question did he ever help him study for the examination or assist him in the practical end of it? I just didn't understand the question.

THE WITNESS: I assume that you meant the nitty-gritty of the questions and answers, that sort of thing.

Q I am referring to the practical portion of taking any licensing test .

A Except to the extent that I would help a needy person in showing him how a particular piece of machinery would operate.

Q Have there been individuals who have come to you personally who have not operated a piece of equipment but who had to take a licensing test?

A I can't say that that has happened. Usually a fellow would accost you on a job site has had some amount of experience and would want to know what that particular type of machine does and how it operates.

Coming out on most machines without any experience you would have to say you better try something less difficult to start with.

That has never happened to me that I can remember.

Q Mr. Murphy, do you remember your deposition taken on March 6th, 1974?

A Yes, sir.

A Referring to Plaintiff's Exhibit 22 for

identification, Page 17, I ask you if you remember being asked this following question and giving the following answer:

"Q Before you became a business representative when you were out of jobs were you ever asked by an oiler for the privilege to operate the crane or to be taught to operate a crane?

"A Occasionally a fellow would come through and say he was taking his test and would I be kind enough to show him how the thing works."

Do you remember that ever happening?

A That is right.

Q Does that refresh your recollection as to whether the individual might have been desirous of being shown how to practically operate the piece of equipment for licensing purposes which he had not operated before?

THE COURT: He is talking about an oiler.

Q An oiler who perhaps had not operated the equipment.

THE COURT: Not a complete stranger.

A I thought I had answered when I said to the extent that I showed the person how to operate this piece of equipment was the extent that I helped him

prepare for their test.

Q But might you specifically help an individual prepare for a City licensing test who, to your knowledge, had not actually operated a piece of equipment before?

A I can't say I have. I would presume that the fellow coming to me asking me how to operate this particular piece of machinery has had experience on machinery that was less difficult .

Was the question that was put to me -- could you read that again, the question that was put in the deposition?

Q "Q Before you became a business representative when you were out of jobs were you asked by any one else for the privilege to operate a crane or to be taught how to operate the crane?

And your answer was if the person were coming through after taking a test --

MR. KENNEDY: I object to the characterization. The answer speaks for itself, your Honor. If Mr. Glassman wants to read the answer, let him read the answer.

THE COURT: We have already been through it. He mentioned he is talking about an oiler. The question was directed to an oiler.

MR. GLASSMAN: I think we can go on, your Honor.

THE COURT: I think so.

Q Mr. Murphy, you are familiar with crane operations.

A Yes, sir.

Q Are there particular kinds of equipment in cranes which require signaling systems for the operator to operate?

A On most crane operations where the operator will have difficulty in seeing where his load lands there is a bell procedure in effect.

Q Who in your experience --

A Signaling procedure, rather.

Q In your experience who actually gives the signals?

A Well, usually there will be the mechanic of a trade that you are working with. Generally on a concrete job, something like that, there will be a concrete laborer. The fellow up top, when you boom over the side of a building when you can't see how your load is going to be disposed of, he will signal you either through a squawk box or if he is in position, he will give you a visual signal with his hands.

This day or today they usually have two-way communication systems where the signal man can talk to the operator.

Q In your experience as a business agent did you generally find sufficient numbers of qualified people to do the work in Local 14?

A Sometimes you had a surplus of them and sometimes there was a scarcity of them. It depended upon how business was. Construction work waxes and wings and sometimes you are busy and sometimes you are in the doldrums.

2.2pm

Q When you have a scarcity of them, would there be any special attempt made to find additional persons?

A Yes. If we had all our people working we would send out anyone who was qualified if he had a city license; or we would take anyone from the surrounding jurisdictions that qualified to go out on that particular piece of equipment.

Q Would you actually go to surrounding jurisdictions and ask sister locals to furnish men?

A If we were that hard up we would put a call in and ask these other jurisdictions if they had any available men and through the grapevine, if you were busy and there was a jurisdiction where there wasn't too

much work, those fellows would be coming looking for work themselves.

Q Have you had any experiences with individuals seeking work who received training in the West Indies?

A Occasionally one would come to the hall inquiring as to their chances of procuring work.

Q What have you told them?

A I would ask them first if they had a City license, what their qualifications were, what they could operate.

Generally they didn't have the City license so I would direct them to the Building Department to make application to take their test.

Q Do you know if there is any particular reason why they could not get the City license?

A Years ago there used to be a bar because they weren't citizens, but I believe that has been lifted. They can take the test now even though they are not citizens.

Q Do you know when this bar was lifted?

A I really don't. Maybe a year and a half, two years ago.

MR. GLASSMAN: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Murphy, when did you obtain your City license?

A 1946, 1947, thereabouts.

Q Prior to the time that you entered Local 14 had you ever belonged to a union before?

A Not a construction union. I was for a short time a member of a longshoreman's union.

Q So you were unable to transfer from any operating engineers into Local 14; is that correct?

A That is right.

Q Because you were a new man was it necessary for you to obtain a sponsor, is that correct?

A That is right.

Q What do the sponsors do on behalf of a candidate who was unknown to the rest of the membership?

A They vouch for his soundness as an operator and as a citizen, as a person of good character and somebody that would be a credit to the organization, both as an operator and as a person.

Q You were asked on direct examination about calls coming from operating engineers into the hall looking for work. Would that be an exception or the rule?

A That is an exception. That would happen only on rare occasions when a fellow would be coming from Levittown, Pennsylvania and got to Penn Station and it was eight o'clock and a fellow has come that far, his chances of getting a day's pay depends on getting over to Flushing which might not happen until 9:30. So naturally he is anxious to procure a day's work so he will call up to find out if there is any possibility that you would have anything in New York that he could go immediately to. It happens rarely, you know.

Q Has it happened when there has been illness?

A Yes.

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Q Does it happen perhaps a man has been ill?

A Yes.

Q Now, Mr. Murphy, based on your experience as an operating engineer are there times when a Local 15 man would give a Local 14 man a signal on a piece of equipment?

A Yes.

Q What types of equipment would those be?

A On a crane, perhaps -- bearing in mind that my main area is building work where we don't have too much intercourse with Local 15 -- I would say generally on the crane or some such thing.

Q Now, Mr. Murphy, you have been a member of Local 14 since 1948?

A Yes.

Q When you joined the union were there any black members?

A Yes, sir.

Q Were there any Hispanic members?

A Yes.

Q Can you recall any time when a black member, a black prospective member was denied membership in Local 14?

A Never.

Q Any Hispanics?

A Never.

Q Do you recall whether or not there was any time when either a black member or an Hispanic member was expelled from the union for any reason?

A No, sir.

Q Are there black and Hispanic members in Local 14 and 14-B today?

A Yes, sir.

Q Mr. Murphy, as a business agent have you ever refused to send a non-book member on a job who was black or Hispanic, where he was qualified for the particular job?

A No, sir.

MR. KENNEDY: I have no further questions.

MR. GLASSMAN: No further questions, your Honor.

THE COURT: You are excused, thank you.

(Witness excused.)

MR. DEVORKIN: Your Honor, the government at this time offers in evidence Plaintiff's Exhibit 16 for identification, which is the deposition of Thomas J. Nolan taken March 6, 1974 -- he was an officer of Local 14 and is an officer of Local 14.

MR. KENNEDY: I have no objection, your Honor.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 16 received in evidence.)

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THE COUPT: You are not going to call him?

MR. DEVORKIN: No.

MR. KENNEDY: Your Honor, I might state for the record that Mr. Nolan has suffered an illness and his hospitalized. I advised the government of it at the time of my first awareness of it, and I have no objection to this.

THE COURT: Well, I was just wondering bec use his name is on the list of prospective witnesses.

MR. KENNEDY: His name is on the list as a possible witness, your Honor.

MR. DEVORKIN: He is business manager of Local 14, your Honor.

THE COURT: All right.

MR. DEVORKIN: Plaintiff calls Donald Wagner.

D O N A L D W A G N E R, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Wagner, how are you presently employed?

A Assistant manager of the New York Erection District for Bethlehem Steel Corporation.

Q How long have you held that position, Mr.

Wagner?

A Since 1962.

Q And before 1962 were you also employed by Bethlehem?

A Yes.

Q In what capacity?

A As a project manager.

Q For how long were you a project manager?

A Five years.

Q And before that were you also employed by Bethlehem?

A Yes.

Q In what capacity?

A Field engineer.

Q And how long were you a field engineer?

A Seven or eight years.

Q All those jobs were in New York City?

A No -- for the most part they were in New York City, yes.

Q What does a field engineer for Bethlehem Steel do?

A Well, he makes sure that the field work is performed in accordance with the drawings and erection scheme.

Q Is his time spent on the job site for the most part?

A Yes.

Q And what does the project engineer do -- project manager, I am sorry?

A He handles more than one job, generally from the district office.

Q And does he also spend time on the job site?

A Yes.

Q And what are the duties of an assistant manager for erection of steel?

A Assistant manager and performs the manager's duties in his absence.

Q What does the manager do?

A He has overall supervision and responsibility for the operation of the field work in the district.

Q You are testifying today under oath, is that not true, Mr. Wagner?

A Yes, sir.

Q By the plaintiff -- subpoenaed by the plaintiff?

A Yes.

Q Are you fully familiar with Bethelehem's hiring practices in New York City?

A Yes.

Q Can you describe for us the nature of Bethlehem's work in New York City in your specific jurisdiction?

A Well, we are involved in structural steel -- furnishing, fabrication and erection. Our responsibility is erection of buildings, bridges, structures.

Q And do you have occasion on such jobs to hire operating engineers?

A Yes, sir.

Q Do you hire operating engineers from Local 14?

A Yes.

Q And Local 15?

A Yes.

Q Now when you have a need for an operating engineer on the job, what exactly does Bethlehem Steel do to obtain such an engineer?

A Well, there would be a superintendent in charge of a particular job, and he normally will call the local, make known his requirements for a particular project.

Q When you say "normally," does that always happen or sometimes happen?

A Not always, no. There are some transfers, or something like that. It depends on the volume; it depends on the sequence of work.

Q When would Bethlehem not call the union?

A If you are finishing a job -- excuse me. It will always be notified at the start of a new project. If I understand your question correctly, they would always be notifed of the start of a new project, so it would be always.

Q Occasionally you transfer men from one job to another?

A That is when the union would be contacted.

Q Do you know why Bethlehem Steel does that?

A Bethlehem Steel is a member of the Iron League in this area, the Iron League has a signed agreement with Locals 14 and 15 which involves a hiring hall.

Q Does that agreement, as Bethlehem Steel understands it, require Bethlehem Steel to call the union?

A Yes, sir.

Q Has the union always been able to supply Bethlehem Steel with competent personnel?

A Yes.

Q What kind of machinery does Bethlehem Steel use on a job site which would require a Local 15 or Local 14 operator or other kind of engineer?

A Cranes, derricks, compressors, welding machines -- basically that.

Q What kind of cranes would that be?

A Crawler cranes, truck cranes.

Q What is a crawler?

A A crane that travels on cats -- caterpillars, as opposed to rubber tires.

Q You mean like steel tracks?

A Right.

Q Has Bethlehem Steel ever hired operating engineers off the street?

A No.

Q As far as you know, has Bethlehem Steel ever hired a non-union operating engineer?

A No.

Q Do you know whether or not a non-union operating engineer has ever appeared at a job site, or Bethlehem Steel asking for such?

A No.

Q If such a man appeared what would Bethlehem Steel's policy be with respect to him? What would be said to him?

A If there were a job opportunty?

Q If a man appeared at a site and said, "I can operate a compressor," or "I can operate a truck crane and I would like a job with you," what would Bethlehem Steel do?

A Well, that would depend on the availability of work.

If he appeared at a construction site, I would say that whatever equipment we would have at that site would be manned at that particular time -- it would be covered.

Q And what, if anything, would be said to that man?

A He would probably be told or referred to the local.

Q Does Bethlehem Steel own all of thse equipment that you described?

A In this district we own all but the cranes. Generally we rent all of our cranes in this district.

Q And who do you rent cranes from?

A Local vendors.

Q Any particular vendor more than others?

A Gerosa would be one.

Q Is Gerosa a large vendor of cranes?

A Yes.

Q And similar operating equipment, such as compressors?

A No; cranes.

Q Just cranes?

A To my knowledge, yes.

Q When you rent cranes from someone like Gerosa, does the crane come with an operator?

A Yes.

Q Are these operators Bethlehem Steel employees or are they Gerosa employees?

A Generally they are Gerosa employees until they reach the site, and at the site they become Bethlehem employees for the duration of the project.

Q And all of these operators have always been union men?

A Yes, sir.

Q Now are there ever occasions where one job of Bethlehem Steel was shut down in the City and another job would start up, causing a need to transfer men from one job to another?

A That happens.

Q Now, what, if anything, does Bethlehem Steel do with respect to the union, with respect to transferring men?

A They will call -- if there is a need for that type of person on another job, on similar type equipment, we would request that they be transferred to the new project.

Q You would request of the union?

A Yes.

Q Is the man always transferred or does anything else ever happen?

A Not always, no. It would be a case by case. It would be up to the --

Q What would happen if the man were not transferred, or if the union said, "No, don't transfer him"?

A He would be laid off.

Q Then you would have to obtain someone else.

A Yes.

Q And the union would supply that other person.

A Yes.

Q Would the union say anything to you about why he was not supposed to be transferred?

A They might, yes.

Q What might they say?

A They might have some other location that they had the man scheduled for.

Q Would they ever say they had another man at the hall who should take that job, the new job, that is?

A Yes. I am not sure I understand.

Q Would they ever say "No, don't transfer Joe. Take the guy who is waiting at the hall for a job."

Did they ever say that?

A Yes, they would send you a man.

Q How many operating engineers does Bethlehem Steel now employ?

A Now?

Q Yes.

A Four.

Q Is work pretty slow in the City now?

A So far as we are concerned, it is.

Q In the past six months or a year, what has been the most operating engineers Bethlehem Steel has employed in the City?

A I would say approximately 15.

Q At one time?

A Yes.

Q What do your Local 15 men do on your jobs?

A Well, we employ maintenance engineers from Local 15 who are employed to take care of guy derricks.

Q Do you also have oilers from Local 15 to maintenance the cranes?

A Yes.

Q Do any of Local 15 men, because a job site necessarily winds up, switch off for a time and run a Local 14 piece of equipment -- perhaps a compressor or a welding

machine?

A Not to my knowledge.

MR. DEVORKIN: I have nothing further, your Honor.

THE COURT: Any questions, Mr. Kennedy?

MR. KENNEDY: Yes, just a few, your Honor.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Wagner, I believe you testified that the collective bargaining agreement required you to call the hall before hiring operating engineers?

A Notify the hall.

Q Notify the hall?

A Yes.

Q I show you Plaintiff's Exhibit 4, and I ask you if you can find that section for me (handing).

(Witness examines.)

THE COURT: 44-C.

MR. KENNEDY: 44-C -- I am sorry, your Honor, you are quite right.

A I would say under the requirements for manning of equipment -- specific requirements for manning of equipment by Local 14 and Local 15 men.

Q And what does it say?

A I think in one instance in here there is a statement -- I cannot find it at the moment -- on a tower crane, that the crew shall be comprised of one man from Local 14 and one man from Local 15.

Q That doesn't say anything about calling the hall, does it, sir?

A No.

MR. DEVORKIN: I object to that, your Honor.

A No.

MR. DEVORKIN: Just a minute. First of all, the witness said he couldn't find the provision specifically at this time.

Second of all, the document does speak for itself. It either says it or it doesn't.

THE COURT: I think you could ask whether it was required by the agreement, whether this was a practice or whether this was done, the form of the arrangement.

BY MR. KENNEDY:

Q Mr. Wagner, I call your attention to page 5, Section 1 of that agreement, and I ask you if you would examine the language there?

A (After examining) Yes.

Q Do you wish to change your answer, sir, as to the question that was originally submitted to you by the

government?

A No. I would say that that paragraph involves the formal hiring of the individual that is sent out, to be sure that he is qualified and acceptable to the superintendent on the job.

Q Is there anything in that paragraph that forbids a superintendent or a field engineer from hiring a man who appears on the job site?

A No.

Q Now the government asked you certain questions about the transfer of men. Did Local 14 ever refuse to permit you to make a transfer where you were satisfied with the man?

A Not to my knowledge.

Q That is all I am asking you -- as to your knowledge.

A No.

Q Did they ever try to substitute a man in place of the operator that you were employing when you wanted that man to stay on the job?

Do you follow my question, sir, or is it --

A Yes.

Q They did?

A Yes.

Q What occasion, sir?

A On the Pearl Street job that we just finished.

Q Tell me what the circumstances were.

A We had an operator on a hoist that was transferred on the job to the hod hoist, and a man sent in his place without the sanction of the superintendent.

Q And what did the superintendent do about it, sir?

A He complained to the local.

Q Yes?

A And the man was sent back the next day, and the next day he was sent back to the hod hoist, and another man was sent down. It went through three changes, and we got a qualified person on the third change to complete the job. It was a different person.

Q But was the objection as to qualifications?

A Yes.

Q And was it eventually straightened out with the union?

A After a couple of days, yes.

MR. KENNEDY: I have no further questions. Thank you.

BY MR. BRADY:

Q Mr. Wagner, in answer to the questions of Mr. Kennedy you said that in reference to the paragraph in the contract, your interpretation was that the man would come to the job to be sure he is qualified and acceptable to the job superintendent, isn't that so?

A Yes.

Q So that is it your testimony then that the job superintendent from Bethlehem has the right to reject someone sent from the hall?

A Yes.

Q Have they done so in the past?

A Yes.

Q Do you recall any instance where Local 15 has objected to the transfer of a maintenance engineer that you might want to transfer to another job?

A No.

Q Has there ever been an occasion, Mr. Wagner, when you recall a man applying for a job at Bethlehem Steel who would be under the jurisdiction of Local 15?

A I am not sure I understand that.

Q Has there ever been an occasion where a worker appears on the job not sent from the union in reply to a call, but just appeared looking for work and that work was under the jurisdiction of Local 15? Has that ever happened?

A I don't know.

MR. BRADY: No further questions.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q I was somewhat confused by this testimony about this Pearl Street job that Mr. Kennedy was asking you about.

Is it your testimony that Bethlehem had a qualified hoist operator on the job and the union sent another man out to take his place?

A Yes.

Q The first man was qualified in Bethlehem's eyes, was he not?

A Yes.

Q You were satisfied with him?

A Yes.

Q And the union sent another man out to replace him?

A Yes.

Q The second man was not qualified in Bethlehem's eyes?

A Yes.

Q And then the second man was sent back because you didn't want to take him?

A The first man was sent back.

Q And the second unqualified man operated that day?

A Oh, no.

Q What happened?

A No one unqualified operated.

Q So nobody operated that day?

A No.

Q And the second day what happened?

A The first individual was sent back.

Q So the very first one came back and he operated?

A He operated.

Q Was the third individual sent by the union to take the first man's place?

A Yes, finally.

Q Then what happened, the first man left the job?

A To another job.

Q And the third man came in and took his place?

A Yes.

Q Was the second and third man a union man?

A Yes.

Q The third man was qualified I take it?

A Yes.

Q And the second man was not qualified?

A Right.

Q Mr. Brady asked you, I believe, whether or not the Bethlehem job superintendent could reject a man sent by the union who was unqualified, correct?

A Yes.

Q He can do this?

A Yes.

Q Has Local 15 sent unqualified men to Bethlehem to work on its job sites?

A Not to my knowledge. I don't know of any instance where they sent that individual.

Q But Local 14 sent an unqualified --

A This instance it did just occur, it is an isolated instance.

Q You have a master mechanic on some of your job sites, do you not?

A Some of them, yes.

Q When is a master mechanic required by the contract?

MR. KENNEDY: The contract speaks for itself, your Honor.

THE COURT: You may ask.

MR. DEVORKIN: I am asking this to lead up to some point I want to make.

THE COURT: Is this a redirect examination? I don't know.

MR. DEVORKIN: My point is going to be, I think both Mr. Kennedy and Mr. Brady brought it out.

But I am not really fussing about it.

Q The master mechanic is chosen under the contract jointly by the employer and the union, correct?

MR. KENNEDY: I object to that.

MR. BRADY: I object. He is now leading his own witness. Moreover, the contract does speak for itself and it is improper redirect examination. I do raise that objection.

THE COURT: It is improper redirect, this wasn't gone into on cross, but the contract must speak for itself.

MR. DEVORKIN: I was just trying to go swifter,

your Honor.

Q Mr. Wagner, in practice when the contract does require Bethlehem to have a master mechanic, how does Bethlehem actually obtain that master mechanic?

MR. KENNEDY: Objection.

THE COURT: Let us get the answer.

Q How does that actually happen, Mr. Wagner?

A How is the master mechanic procured?

Q Yes.

A Through the local.

Q Does Bethlehem go out and look for the person it wants to be master mechanic?

A No.

Q The union sends out the master mechanic?

A Yes.

MR. DEVORKIN: I have nothing further.

THE COURT: You are excused, thank you.

[Witness excused.]

MR. DEVORKIN: Your Honor, I am in an embarrassing situation. I am a lawyer with nothing to say.

We have moved a lot faster than I thought.

THE COURT: I am glad to see that we are moving along.

MR. DEVORKIN: We had a group of witnesses that

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we did not intend calling until this afternoon and when we saw that we might reach them last night and this morning around lunchtime, we had difficulty in doing that.

THE COURT: All right, we will adjourn until 10:30 Monday.

[Adjournment taken until
September 23rd, 1974 at
10:30 a.m.]

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
John J. Messinger	538	579	589	
Everett Broderick	593	608		
Edward Murphy	610	624		
Donald Wagner	628	638	643	

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
10		538

BEST COPY AVAILABLE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
vs. 72 Civ. 2498
LOCAL 14-14B INTERNATIONAL UNION OF OPERATING ENGINEERS, et al.

New York, September 24, 1974;
10.30 A.M.

Trial resumed.

- -

MR. DEVORKIN: Good morning, your Honor. Once again I would like to make an offer from one of the exhibits that has been previously marked for identification, 13-A for identification and 13-B for identification. I would offer certain pages of that testimony and I will read the pages.

Those are from the City Commission and Human Rights hearings in 1963 and 13-B is the City Commission and Human Rights hearing in 1966 and the testimony I propose to offer is that of Messrs. Dalton, Wade and Dillion. Mr. Dalton was president of Local 14 and Mr. Wade was business representative of Local 14 at the time he gave the testimony and Mr. Dillion was business manager at the time he gave the testimony and I offer those as admissions of Local 14. I will read the page numbers if your Honor wishes.

THE COURT: All right.

MR. DEVORKIN: From 13-A for identification I

offer page 118, 121, 122, 125 and 126.

From Plaintiff's Exhibit 13-B for identification I offer pages 683, 684, 710, 722, 723, 725, 743 through 746, 754 through 756 and page 761

MR. KENNEDY: Your Honor, may I ask what the offer of proof is on this, the purpose of it?

THE COURT: Yes, tell us.

MR. DEVORKIN: Admissions by Local 14 agents and officers as to the union's practices and hiring practices in the industry at those times.

THE COURT: 1963 and 1966?

MR. DEVORKIN: In 1963 and in 1966.

THE COURT: You are at liberty to offer other pages, as you know.

MR. KENNEDY: I object to it, because Mr. Dalton was not a business agent for the union at the time and had nothing to do with the hiring practices as such.

As far as Mr. Wade is concerned, he testified here as business agent and I wanted to know whether or not this offer at the present time was to contradict his testimony.

THE COURT: I don't believe so.

MR. DEVORKIN: It may contradict his testimony but it is not necessary that it does for it to be admissible.

THE COURT: No, it is received as admissions and I will weigh the matter on Dalton of receiving that. He didn't occupy a position --

MR. DEVORKIN: He was president of the union at the time and had the same position.

MR. KENNEDY: This as to hiring hall practices and there is no --

THE COURT: I haven't read the testimony, so I don't know.

MR. KENNEDY: There is no testimony that Mr. Dalton ever participated in any hiring practices or was even there.

THE COURT: I haven't read the testimony and I will weigh the testimony. If it isn't competent I won't take it, but I am receiving it and will look at it.

Anything else on this?

MR. DEVORKIN: No, sir.

The government calls Mr. John Russell.

JOHN A. RUSSELL, JR., called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Russell, how are you employed now?

A I am construction manager for Harris Structural Steel Company in Piscataway, New Jersey.

Q Are you testifying under subpoena by Equal Employment Opportunity Commission today?

A I am.

Q How long have you been construction manager for Harris Structural Steel?

A Three years.

Q Before that did you hold any other position with Harris?

A Yes, I was assistant construction manager.

Q How long?

A Since 1957, 1958.

Q What is the job of construction manager for Harris Steel?

A Many and varied, I would say. Getting jobs started, watching the construction, seeing that the job goes properly.

Q In the course of that job have you become familiar with the hiring policies of Harris Structural Steel Company?

A I have.

Q Has Harris Structural Steel Company belonged to any employers' association in New York City?

A It does.

Q Which one is that?

Q The Iron League.

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Q Aside from the Iron League, Mr. Russell, do you have any contracts with either Local 14 or 15 of the Operating Engineers Union?

A We have had, and I believe we still do. The technicalities I do not know at the present time, how it is completely worked out, but we do have it through the Iron League.

Q That would be a collective bargaining agreement?

A Right.

Q What kind of work in the past has Harris Steel done in New York City?

A Structural steel work.

Q And what does that consist of?

A Erecting of the structural framework for bridges or buildings.

Q Do you currently employ any operating engineers in New York?

A Yes.

Q And you have in the past five years?

A Yes.

Q Do you now employ both Local 14 and 15 men?

A Yes.

Q When you need an operating engineer, either Local 14 or Local 15 for one of your jobs, how do you obtain such

a person?

A The job superintendent calls in for the people he needs to operate the pieces of equipment.

Q Whodoes he call in to?

A The local.

Q The day room or the office?

A The office, so far as I know, yes.

Q Does Harris own any of its own equipment?

A Yes.

Q Do you own all of your own equipment?

A No.

Q Do you rent?

A On occasion.

Q What kind of equipment does Harris use in its projects -- what kind of Local 14 or 15 equipment?

A Cranes and compressors and welding machines.

Q And you employ the operators and oilers of those cranes?

A Yes.

Q Have you ever had occasion to switch an operating engineer from one machine to another, or from one job site to another?

MR. KENNEDY: I object to the form of the question, your Honor. Mr. Devorkin I do not think has identified

what union member he istalking about, so that it makes it clear to the witness and to the Court and the attorneys what he is talking about.

THE COURT: Which one?

Q Have you ever had occasion to switch either a Local 14 or Local 15 union member from one machine on one of your jobs to another machine on the same job or from one job to another job?

A I can't say right off the top of my head whether it has been done. I know they have changed, for instance, from one hoist to another hoist, if that is what you are referring to.

Q When that is done is the union contacted?

A Not generally. If someone is sick or something like that, if they have to switch a man around.

Q What if a man is switched to another job of Harris's inthe City?

A I don't think -- I can't really remember of any man being switched right now.

Q Does Harris employ master mechanics on occasion on its jobs?

A It does.

Q When do you have a master mechanic on one of your jobs?

A When there are --according to the contract we have the number of operators required to demand a master mechanic, according to our agreement.

Q What are the duties and functions of a master mechanic on a job site?

A He has to see that the job, so far as his men are concerned, that everyone is there, that the machines are working, and to fill in if somebody should get sick or something like that.

Q Except for filling in, he is not operating machinery?

A Not that I know of.

Q Is it fair to say that he serves in a supervisory capacity on the job?

A I would say so.

Q Does Harris select the master mechanic who applies for the job or is there some other way it obtains the master mechanic?

A It is usually one that has been appointed to us, or on occasions we have asked for one possibly, but usually it is appointed to us.

Q Appointed to you by who?

A Well, the union has said, "Well, this man will probably be your next master mechanic."

Q Did you ever, so far as you know, hire operating engineers off the street, that is, by not calling the union?

A No.

Q Do you know if Harris would have any policy with respect to information that would be conveyed to such a person walking off the street seeking such a job?

MR. KENNEDY: I object to that. The witness has testified that he has not hired people off the street. Now he is asking about a policy with respect to the matter.

THE COURT: Let us find out whether there is such a policy.

MR. DEVORKIN: I think, your Honor, that Mr. Kennedy did not listen to my question.

Q The question, Mr. Russell, was: do you have a policy as to what you tell a man coming in off the street to Harris looking for work if he weren't coming from the union?

A We would have to ask him to go to the local union for referral to us.

Q Harris has compressors on its job sites, does it not?

A That is right.

Q Can you tell us whether or not persons operating compressors are young or old men, or both?

A That is a ticklish question. I believe I have seen mostly older men on the compressor, and possibly younger -- I am not sure right now offhand.

Q Does Harris Steel have any New York plant trainees on any of its job sites in the operating engineers trade?

A I can't say right now. I don't know. I haven't looked at our records. I don't believe so.

Q Do you recall any in the past?

A No.

Q Has there ever been an occasion when Harris Structural Steel has asked either Local 14 or Local 15 to send a minority person out as an operating engineer?

A Will you please repeat that?

(Question read.)

A No, I don't know whether -- no, I don't know, really. I mean, we have this going through the superintendent calling for the men, so I can't say.

Q Do you know whether Harris has any contracts with the City or the Federal Government or anyone else that requires them to seek minority persons as operating engineers on their job sites?

A Yes, we have, but not right this minute, I can't think of any.

MR. DEVORKIN: I have nothing further, your Honor.

THE COURT: Any questions, Mr. Kennedy?

MR. KENNEDY: Yes, your Honor.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Russell, under the terms of your collective bargaining agreement, when the engineers come to the job your foreman is free to hire or reject those particular men, isn't that correct?

A That's right.

Q And whether they come from the union hall or off the street, that same policy would be in effect; isn't that correct, sir?

A That is right.

Q Now so far as you know has Harris ever made any requests of Local 14 to supply them with minorities?

A I can't personally tell you that; I don't know.

Q Now the only other questions I have for you are these:

Under the terms of the collective bargaining agreement if you wanted to switch a man from a compressor to a hoist, are you able to do so?

A I can't tell you right now -- honestly I can't.

I don't have the agreement here.

Q All right. And do you know, sir, of your own knowledge whether or not situations such as those have been done by Harris Steel in the past?

Do you follow my question, sir?

A In other words, switched from a hoist to a compressor?

Q Yes, sir.

A Without looking at the records I couldn't really tell you. I just cannot answer that question for you.

MR. KENNEDY: All right, sir, I have no further questions.

MR. BRADY: I have no questions of this witness, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. DEVORKIN: Plaintiff calls Mr. David Jacobs.

D A V I D J A C O B S, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Jacobs, how are you currently employed?

A I am the comptroller of Andrew Catapano Company, Incorporated.

Q As the comptroller are you generally familiar with the hiring practices of Andrew Catapano Company with respect to operating engineers?

A Generally.

Q What kind of business does Andrew Catapano Company do?

A We build sewers.

Q And what kind of work does that entail?

A That entails usually what is called open cut work -- excavating, sheeting, putting in a structure; backfilling it and resurfacing.

Q What kind of equipment would you use to perform that work?

A We would use cranes, hydraulic as well as cable cranes, earth-moving equipment.

Q What kind of earth-moving equipment?

A Loaders, bulldozers.

Q Do you use any digging equipment?

A Yes, hydraulic backhoes, gradealls.

Q Is that hydraulic backhoe cat-mounted?

A It could be cat-mounted or on rubber tires, depending on the situation.

Q I omitted one thing, Mr. Jacobs: are you testifying under subpoena?

A Yes, I am.

Q Do you employ operating engineers in this line of work?

A Yes, we do.

Q Are they members of any union in the City?

A Local 14, 15 and their related entities.

Q How many men do you now employ as an operating engineer?

A Currently I do not have exact numbers -- perhaps 10 to 12.

Q In 1973 how many men at any one time did you employ?

A Well, we might have had two or two and one-half times that many, depending on the level of jobs at the time.

Q When Catapano needs an operating engineer to perform this work how does it go about obtaining such a man?

A Probably the project superintendent will call the hiring hall.

Q Is that the general practice of Catapano?

A Yes, I believe so.

Q Do you know whether Catapano has ever employed any non-union operating engineers?

A Not to my knowledge -- I don't know of any.

MR. DEVORKIN: I have no further questions.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Jacobs, your superintendent of the job site normally does the hiring and firing, isn't that correct, sir?

A That's correct.

Q And if he were to hire a man off the street who was non-union, would you know about that at all?

A Yes, I would.

Q How, sir?

A Well, because the information would come in, since in the office we have to take care of the payment of benefits and the recording of the man for the Equal Opportunity and the optional forms, 66 forms -- we have to know what the man's status is.

Q You have a collective bargaining agreement, do you not, sir?

A Yes, we do.

Q And are you familiar with any provisions which permit a non-union man to be hired for a period of seven days and then to be compelled, in effect, to join the union?

A I am not familiar with it at all.

Q But there is a possibility that that clause may be in the contract?

MR. DEVOPKIN: I object, your Honor.

THE COURT: Well, the contract speaks for itself.

MR. KENNEDY: Yes, I understand.

Q As far as the operation of the superintendent is concerned, do you know of your own knowledge whether or not an operating engineer who is licensed and who is a member of the union might approach your superintendent directly for a job?

A Of my own knowledge?

Q Yes.

A I don't know. It's possible, but I don't know.

Q Are you familiar with the City license requirements, sir?

A No, I am not.

MR. KENNEDY: I have no further questions.

MR. BRADY: I have no questions, your Honor.

THE COURT: You are excused; thank you.

(Witness excused.)

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MR. DEVORKIN: The government calls Emil M. Ondrey.

E M I L M. O N D R E Y, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Ondrey, how are you currently employed?

A I am president of Michael J. Torpey, Incorporated.

Q Are you testifying under a subpoena by the Equal Employment Opportunity Commission?

A Yes, I am.

Q What kind of work does Michael J. Torpey do in New York City?

A Excavating and street utility work.

Q Generally heavy construction work?

A Yes.

Q Do you also do highway work?

A We haven't recently.

Q But you have in the past?

A We have.

Q What are your duties as president of the company?

A Worry about the company.

Q Are you generally familiar with all of its hiring

practices with respect to operating engineers in New York?

A I think so.

Q Do you have a collective bargaining agreement individually or with an employers' association?

A To the employers' association.

Q With both Local 14 and 15?

A Yes.

Q Do you know which employers' association that is?

A The General Contractors Association.

Q You employ both Local 14 and Local 15 operating engineers?

A Yes.

Q What kind of machinery does the Torpey Company use?

A It uses truck cranes, hydraulic backhoes, compressors.

Q Any other earth-moving equipment?

A Possibly loaders, but at the present time that is the main thing.

Q How many operating engineers do you employ at the present time?

A At the present time two.

Q Things are fairly slow now?

A Very slow.

Q In 1973 how many would you have employed at the peak?

A Possibly 10, 15, something like that.

Q When you have a need for operating engineers on one of your job sites how do you go about obtaining such a man?

A Usually the superintendent contacts either one who worked for us previously or else calls the hall.

Q The man that worked for you previously, was he a union man?

A Yes.

Q How would you have obtained him the first time you had occasion to employ him?

A Possibly worked for us previously. I wouldn't say exactly, but we know he knew his job and that is what we are interested in.

Q Can you recall any situation on which you have employed a non-union person as an operating engineer?

A I don't recall.

Q Would the company have any policy of conveying any information to a person who came to a job site of yours and sought employment as a non-union operating engineer?

A I don't ever recall anything like that.

Q If such a person came what would the Torpey

Company --

MR. KENNEDY: Objection, your Honor. He said he doesn't recall any.

THE COURT: He doesn't recall. You can ask him if they have any policy.

Q If a man came to the job site, Mr. Ondrey, and said he was an operating engineer on a hydraulic backhoe and sought work but was not in the union or had not worked for you before, what would you do?

A We wouldn't hire him; possibly refer him somewhere else, but we are looking for experienced men.

MR. DEVORKIN: I have nothing further.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Ondrey, when times are good and you employ say 10 or 15 operating engineers, most of those engineers have been with you for some period of time, isn't that correct?

A That is right.

Q They are like on a permanent payroll, am I right, from job to job?

A Yes.

Q You transfer them from job to job, do you not?

A Yes.

Q It is only when an engineer quits or is fired

that your company has to resort to obtaining additional engineers, isn't that correct?

A That is correct.

Q Under those circumstances, if I understand your testimony, the superintendent would either call the hall for one or call an engineer that had previously worked with your company and had been found to be satisfactory?

A That is correct.

MR. KENNEDY: Thank you.

MR. BRADY: Just a few questions, your Honor.

BY MR. BRADY:

Q Mr. Ondrey, have there been timeswhen you called the union and asked for a particular man to see if he was available?

A I guess we have, yes.

Q Is one of the reasons that you call the union to get qualified and competent operators?

A We are in very delicate work with utility high tension wires and we can't experiment with fellows that can't operate.

Q The union is a source of competent operators?

A Yes.

MR. BRADY: No further questions.

BY MR. GALLAGHER:

Q Mr. Ondrey, you have stated that your company has agreements with the operating engineers through the General Contractors Association, is that correct?

A That is correct.

Q Do you recall how those collective bargaining agreements are signed?

A They are signed by the assocation but then in turn I am given a contract also.

Q But is the association signing as a member or on behalf of members of the association?

A That part I wouldn't know how that is handled.

MR. GALLAGHER: No further questions.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Ondrey, have Local 14 or 15 ever sent you an unqualified, unsatisfactory operating engineer?

A To be honest with you, I had a minority fellow on a machine for about 15 minutes and he wrecked it on me.

Q Anybody else?

A Probably once in a while, but I don't recall exactly. We may have had someone that can't handle a particular situation.

Q He would be sent back to the hall?

A We would send him back.

MR. DEVORKIN: I have nothing further.

RECROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Ondrey, do you have occasion to switch men from one job to another job like from a compressor to operating a crane?

MR. DEVORKIN: I object.

A Yes.

MR. DEVORKIN: I move to strike the answer. It is beyond my redirect.

THE COURT: It may be beyond the redirect, but I will permit it.

MR. KENNEDY: And that is the only question I had on that.

THE COURT: All right.

BY MR. BRADY:

Q Mr. Ondrey, the minority member that worked for you that you spoke about, do you recall what piece of equipment he was operating?

A A hydraulic backhoe.

Q Was he working under the jurisdiction of Local 15?

A I believe he was.

Q Do you recall his name?

A I don't know. It is quite a few years, five or six years.

MR. BRADY: Thank you.

THE COURT: You are excused.

(Witness excused.)

MR. DEVORKIN: The plaintiff calls Jerone Koch.

J E R O M E K O C H, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Koch, how are you currently employed?

A Vice-president of Carl Koch Erecting Company.

Q Are you testifying here today under subpoena by the Equal Opportunity Employment Commission?

A Yes.

Q And what are your duties as vice-president of Koch Construction Company?

A Generally take care of the finances of the company.

Q Are you familiar with the hiring practices of Koch?

A More or less, yes.

Q With respect to operating engineers?

A Yes.

Q What kind of work, if any, is done by Koch Company in New York City?

A Structural steel buildings and bridges, stadiums.

Q Can you tell us some of the work that you have done here in the last three years?

A The Bruckner Boulevard Expressway, the World Trades Center and presently working on the Yankee Stadium, a few smaller, Columbia University.

Q Did you do the entire steel erection for the World Trades Center?

A Yes.

Q On a job like the World Trades Center, how do you employ operating engineers on a job like that?

A Generally we have employees with the Unions 14 and 15.

Q What kind of work do they do on that job?

A Run hoists, cranes, compressors and welding machines.

Q Do you do any digging work?

A No.

Q Is it also true of other jobs you have in the City?

A Yes, we don't do any type of digging.

Q You employ Local 14 and 15 men?

A Yes.

Q Do you have a collective bargaining agreement with either one of the unions?

A We do not. We follow behind the agreement.

Q You don't sign a formal agreement?

A No. Not to my knowledge, we haven't in the past.

Q When Koch Construction has a need for an operating engineer on a job, either the beginning of the job or during the course of a job, how does it obtain such a person?

A If we know of an engineer that is out of work we might call him, but generally we call the hall.

Q How many operating engineers do you employ now?

A Right now I believe three. The only job is the Yankee Stadium.

Q In 1973 how many?

A 1973, not too many either.

Q When you worked on the Trades Center and were operating at a full peak, how many operating engineers did you have?

A I would say -- between both unions?

Q Yes.

A I would say between 50 and 60.

Q Do you know whether Koch Construction Company ever employed a non-union operating engineer?

A Unless the union sent us somebody I would say no.

Q Do you know whether or not you have any New York Plan trainees as operating engineers on your jobs?

A Right now, no. We only have two engineers. I do believe we had a trainee in the Yankee Stadium, but I don't know whether he is operating or learning the trade as an oiler.

Q Do you know what his pay scale is generally?

A The pay scale I think is about 6.50 or 6.52.

Q Taken as a percentage of the union scale?

A I would guess so.

MR. BRADY: Are you talking about the hourly rate, your Honor?

Q Just answer my questions, Mr. Koch, please.

THE COURT: He wants to know if that is the hourly rate. I am curious about it, too.

Q How much is the hourly rate for the New York Plan trainee?

A I think it is $6.52. I might have it here.

Excuse me, it is $6.20 an hour.

Q That is an oiler?

A A trainee, I would suspect it is an oiler, but I am not sure.

Q How much does a union man who is an oiler get per hour?

A $9.64 an hour.

Q Do you know if the oiler trainee gets to operate the machine and sit in theseat?

A I would say no, it would be too dangerous at this stage.

Q Has Koch Construction Company ever had occasion to request from the union a minority person as an operating engineer?

A Yes.

Q Do you recall when that was?

A During the building of the Trades Center.

Q Were you under any contractual obligation to do that?

A No contractual obligation, no.

Q Do you know why it was done?

A It was done at the request of, I am sure, the New York Port Authority.

Q Do you know what the response of the union was at that time --which local union was that, 14 or 15?

A I would say it was both.

Q Do you know what the response of the two unions were?

A I am sure it was favorable.

Q Such a person was sent?

A Because we received many commendations around the job for keeping minorities at a certain percentage of the employment.

MR. DEVORKIN: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Koch, when times are good does your company have a steady group of engineers that it employs?

A When you say times are good, we only employ engineers for a job. We have on occasion kept engineers working for two or three years.

Q What I am saying is, if a job lasts two or three years you would keep those engineers on the payroll, assuming they were good, for the entire length of the contract?

A Yes.

Q And if you had another job going some place else, would you transfer the same ones?

A Yes.

Q Are you familiar with a gentleman by the name of

Gene Howard?

A Gene Howard?

Q Yes.

A I personally, no.

Q Do you recall making a request of Local 14 to send you some black engineers to work on the World Trades Center?

A Our superintendent has.

MR. KENNEDY: I have no further questions.

MR. BRADY: I have no questions of this witness, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. DEVORKIN: The plaintiff calls Robert Meyer.

R O B E R T C. M E Y E R, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Meyer, how are you currently employed?

A I am vice-president of H.O. Penn Machinery Company.

Q Are you testifying here today under subpoena by the Equal Employment Opportunity Commission?

A Yes, I am.

Q How long have you been with H.O. Penn?

A Just past my 20th year.

Q How long have you been vice-president?

A About nine years.

Q Which division is that vice-president of?

A Of the Product Support Group, which is the parts and service department of the company.

Q Before you had that position, did you hold another position with H.O. Penn?

A Before that I was general service manager.

Q How long were you general service manager?

A About 11 years.

Q What are your duties as vice-president of Product Support?

A I have the responsibility of the overall administration of the company's parts and service departments and their physical facilities and their people.

Q What were your duties as general service manager?

A Just to service departments.

Q What would that entail?

A The overall administration and taking care of the company's service department shops. We have now seven locations, four of them with caterpillar locations and three are

with towmotor.

Q Can you briefly describe for us the nature of H.O. Penn's operations in New York City?

A We are the authorized caterpillar and towmotor representatives. In the caterpillar side we sell and service construction equipment. On the towmotor side we sell and service material handling equipment.

Q How many shops do you maintain to service the caterpillar equipment?

A Four.

Q And how many men are employed in those shops under the jurisdiction of either Local 14 or 15, if any?

A It varies from time to time. About 160 men.

Q Is the Penn Company only in New York or do you have any other activities in this area?

A We have the State of Connecticut as an assigned territory and the southeastern counties of New York State, including New York City, Long Island, which is Nassau and Suffolk, of course.

Q As part of your duties for Penn do you have anything to do with the negotiations of the collective bargaining agreement?

A Yes, I do.

Q What do you do in that respect?

A I sit in on the negotiations.

Q Do you have collective bargaining agreements with either Local 14 or 15?

A With Local 15-C.

Q Are there any men employed for H.O. Penn directly under you or can you give us the structure of the companies directly under you?

A Each location has a service manager and a parts manager. The service manager is responsible for his work force at his respective locations, just as the parts manager is responsible for his warehouse people.

Between the service manager who is directly responsible for the work force and myself there is a general service manager on the service side and on the parts side there is a parts distribution manager who handles strictly the warehouse functions and a parts sales manager who worries about parts and service sales.

Q On the service side who would be directly beneath the service manager?

A The shop foreman.

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Q Now all those positions you have told us about, are any of them union positions -- that is, does the person who occupies that position , is he a member of the union?

A The foremen are members of the union.

Q And the men employed in this shop beneath the foremen, are they members of the union?

A Yes, they are.

Q Can you tell us what their job categories are underneath the foremen in your shops?

A You mean by agreement, by the union classification?

Q Well, tell us what they are under the general practices of H. O. Penn.

A Under the foremen we have shop mechanics, which are class A or class B. Then we have helpers, and below the helpers we have handymen.

Q What is a class A mechanics supposed to be able to do?

A Well he is supposed to be able to do everything without close supervision, either in the shop or in the field.

Q Do you recall what his pay scale is?

A I believe it is $8.05 an hour.

Q And how qualified is a B mechanic?

A Well he is almost as qualified as an A but he does

require some supervision. He works closely with an A mechanic, and he is not always sent out in the field -- he is more a shop man.

Q And how much does he get paid an hour, do you know?

A Oh, about 40 cents an hour less, I would say.

Q And what does a helper do in your shops?

A He assists either an A or B mechanic. He is not required to have a large variety of tools to work with. He is not expected to perform diagnostic tests. He is an assistant -- a helper, as the name implies.

Q Do you know what his rate of pay is?

A Probably 35 or 40 cents less than the B man.

Q Can you tell us how many of each of these categories of personnel you general employ?

A Almost all of our men are B or A men. That happens mainly because we have a very low labor turnover. There is very little turnover in the shops. We are serving an industry that demands performance, and because the men stay with us a long time they develop the talents and skills that enable them to move up into the A or B category.

We are selling this labor to our customers and we expect that they expect us to send men who are qualified and who have experience.

Q Are there any other reasons why you may not have

as many helpers?

A I don't follow your question. I explained that they stay with us a long time and as they get the training and the background they move up into the B category.

Q Is it economically feasible for the company to have many helpers at the pay rate currently in force for helpers?

A At the A rate?

Q At the pay rate?

A At the pay rate.

Q Yes.

A The only shops that we have helpers in, is helping the mechanic, which is limited to scraping machines, preparing machines for paint, working the steam cleaner and doing what is normally termed bull work -- and there is normally not a lot of that around.

Q Did you have another category in the shop besides the ones you mentioned -- in the collective bargaining agreement with the union?

A Not that I can recall. It is always a handyman, helpers, A and B.

Q Is there anybody called a sweeper?

A Yes. At one time a shop sweeper was part of the bargaining unit but some years ago that category was eliminated

from the union contract, and that man does not have to be a union man -- a porter or sweeper, right.

Q Tell us if it is the case that men move up from one category to another as they are employed in your company over a period of time?

A Yes, they definitely do.

Q When they are first employed as helpers would they move up the ladder eventually?

A If they are qualified, yes.

Q At the time you had sweepers, was that ever true of those men?

A On rare occasions. The men brought in as sweepers, usually have some limiting, outside fact -- he might be -- well I don't want to call him of low mentality but that quite often was the case.

Q Do your handymen ever move to another job category?

A Yes, they have.

Q What other duties of a handyman?

A Well a handyman -- again he does this bull work that I mentioned in the shop.

Q What kind of work is that?

A He works in the parts warehouse -- all the men in the parts warehouse are handymen.

Q And what kind of work is involved?

A It would be fork lift trucks, yard cranes and hoists.

Q Do handymen ever operate that equipment?

A Yes, they do.

Q In the average year how many would H. O. Penn hire as mechanics or helpers or handymen?

A As far as new-hires or re-hires, or how much turn-over?

Q Let us take new-hires first.

A I would say in the average year, between five and seven men might be a fair number.

Q And how about re-hires?

A Well that is where most of our hires come from -- when work falls off and the work force is reduced to men that we re-hire are usually men that have been with us before.

Q This figure of 5 to 7 -- I am confused -- was that for new-hires or re-hires?

A Well I would say that was the activity -- it may be 8 men or so each year. If the work force has been cut down then it is added to. Brand new men that come in each year is probably less than five.

Q Does H. O. Penn have any general practice with respect to obtaining persons as mechanics for your shops?

A What is our standard operating practice?

Q Yes.

A Yes. The service manager in each shop has a responsibility for controlling his work group. When he has a need for mechanics he usually calls a halt and announces his requirements.

Q And what happens after that?

A Well, they send up candidates there which we can select.

Q How frequently do they send up candidates when you make such request?

A About 80 percent of the time.

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Q And this other 20 percent of the time, do you know what a man is not sent up?

A Well there are times when we have a need for an A man and there are no A men available; then we have to look to other outside sources for those people.

Q What other outside sources do you use?

A Probably the one we use the most is referrals by people who are presently in our employ -- we pass the word to our employees that we are looking to add.

We get men from contractor shopsthat are cutting back, where the shop has been reduced and we are aware of it, and we check with those people.

And the remote shops that are not close to New York City, we have even run ads in the newspapers.

Q And how do you become aware of men being let go by other contractor shops?

A Well, we are a very close-knit group. It is a very vertical business, -- the people who we see are the same people day after day, year after year. The master mechanics or the parts shop men is in our parts counter a couple of days each week, and word of mouth spreads very quickly.

Q Can you tell us whether or not the mechanics are in demand or is there an excess of mechanics?

A I don't think there has ever been an excess of good mechanics.

Q Is it fair to say that there is a shortage of good mechanics?

A In our end of the business I would say yes.

Q When a man is sent to you by the union during that 80 percent of the time, or the other 20 percent when you obtain a man initially yourself, what happens when he works in this shop? What are your practices with respect to that man?

A Will you repeat that, please.

Q What do you do with a man when he comes to the shop for the first time? Do you interview him?

A Oh, absolutely. He fills out an employment application form. He is interviewed by the service manager and the

shop foreman. Then he gets put to work on a probationay status. They watch him and observe him to make sure he is capable of doing what he says he can do.

Q Is there any tendency one way or another to have more B mechanics or more A mechanics? Is there any company preference with respect to A or B mechanics?

A Of course ideally we would like to have all A mechanics because they are most flexible and can be sent everywhere and do everything, but that is not practical.

Q Do you also employ welders?

A Yes.

Q Are they all certified welders?

A Yes, they are.

Q Do you ever get a helper come into the shop, or a man being sent into the shop without any experience -- related experience?

A Not very often. I can't recall when a man came in and had absolutely no experience.

Q What kind of experience does he generally have?

A He usually has some military experience, or he has worked in a closely-related field -- he has been a truck mechanic or an automobile mechanic.

Q Now have you ever had any conversations with any officers or delegates of the union with respect to your using

the union to hire men?

A I'm not sure I understand what you mean.

Q Have there ever been any occasions when you have had conversations with the union after you hire a man without going through the union?

MR. KENNEDY: May we have an identification as to the union, please?

THE COURT: I take it any union. If he says "no" then it does not matter. If he says "yes" then we will find out what union.

Q Local 15C, Mr. Meyer?

A As far as specific conversations that I can recall I would have to say no, but from a practical point of view, naturally the union would have us look to them as our source of labor, and in general we do, and that has been a very good working relationship.

Q Have you ever hired anybody without checking with the union first?

A Yes, I think we have.

Q And after you have done that you heard anything from Local 15C?

A Only if they have someone in the hall that they felt was equally qualified.

Q And what would they then say to you?

A Well they would prefer that we come to them and ask us, you know, to be kind enough to check, but in that instance, when that happens it is usually a man who has come to us from another place who has all the training and qualifications that mechanics especially are suitable to our business have, and when that is explained to the union they have always gone along, never refused to give a man a book.

Q Do you know how long a man must be with Penn before he is given a union book?

A You are asking me what the probationary period is in the contract, and I don't recall what it is, but whatever it is that's the time.

Q Maybe six weeks?

A Six weeks, if you say so.

Q Does the company have anything to do with referring that man to the union after he has been with you for six weeks? Do you do anything?

A No, we really don't do anything.

Q Do you know if anyone else does anything with respect to getting the man a book?

A Well, to the best of my recollection the shop steward in the shop sort of consoles and advises the fellow about getting to go down the hall and get signed up.

Q When you say "shop steward" who does that man work

for as shop steward?

A He works for us. He gets no pay from the union. It is a voluntary job that he picks up, just to be a fellow onboard, who looks after the union's interests.

Q The shop steward's job is in behalf of the union?

A Not really. He is our employee.

Q I understand but his duties as shop steward, they are on behalf of the union, not on behalf of Penn. He represents the union's interest as the shop steward?

A I suppose he does, yes.

Q Are you familiar with the union security clause in your collective bargaining agreement?

A No.

Q Are you familiar with the clause with respect to a man shall become a member of the union after being employed 30 days?

A Well, that does sound familiar, yes.

MR. BRADY: Your Honor, I am not going to object too strenuously but Mr. Devorkin is getting into the habit of leading the witness. Now this is his witness, and we have some contracts in evidence that speak for themselves. The witness says that he is not familiar with it. Mr. Devorkin then gives him an article from the contract.

THE COURT: Well he said it sounds familiar.

Q Can you tell us what Penn's position is with respect to that clause in this respect? Does the clause, so far as you are concerned, protect the company? Is it designed to protect the company?

MR. BRADY: I am going to object to that, your Honor. He is leading the witness.

THE COURT: You are asking for an interpretation of the contract.

MR. BRADY: Right.

MR. DEVORKIN: Your Honor, he is a party to the contract.

THE COURT: Ask him what the purpose of it is.

Q What is the purpose of that clause, Mr. Meyer?

4-3 A To make the work force uniform, to make sure they are all members of the union.

Q Is that clause, so far as plaintiff is concerned, does it offer any protection to the man.

A Does it offer any protection to theman? Well it certainly assures the man that he is going to be paid union scale, certainly.

Q Does Penn have any expectations with respect to that man being allowed to have a union book?

A Do we have any expectations?

MR. BRADY: Your Honor --

A None that I can think of.

Q Is a man supposed to get a book after 30 days with you?

A Yes.

Q And if he did not get a book from the union would Penn do anything about it?

A Well we never had a case where he didn't.

Q Now do you have any provisions in your collective bargaining agreement with respect to an apprenticeship program?

A I am familiar in general with the clause that says there shall be a joint effort to carry out an apprentice program, yes.

Q Is there such an apprentice program?

A Not formally, no.

Q Does Penn want such an apprentice program?

A I think our situation is -- yes, we want an apprentice program, and I think our situation is peculiar to the product line that we represent. The product line is continually getting more and more complicated, and as far as the people that work on them to have more specific and more technical knowledge. There is more test equipment.

The word "sophistication" has been used so many times, but that is true. That is what is happening to our

equipment, and we feel strongly that there should be some formal training program so that we can educate our people to work on that equipment with competence.

Q Do you have any opinion about what form such a training program would take?

A Not really, but we have an in-house training program now, but it is not a formal apprenticeship training program.

Q Do you have any formal apprenticeship training program in any of your other geographic jurisdictions, or with any other unions?

A Yes, we have one with a machinists union.

Q Do you have any with any engineering union that you might have contracts with?

A Well, that is a "yes" and "no" question, because our Connecticut Local 478 just signed a contract in which the new contract has a provision for an apprentice program, but that has not been formalized yet. There has just been an outline provided.

Q Would any apprentice program you would undertake with 15C here in New York resemble any other apprentice program?

MR. BRADY: I am going to object to that, your Honor. First of all, it does not come within any of the allegations of the complaint that I can see. I don't know

why he is getting into a program that is not even in effect.

THE COURT: Is this a Connecticut local program that is covered by a contract?

MR. DEVORKIN: I think Mr. Meyer did say they have an agreement with another union in a different craft.

THE COURT: Well, ask him about it.

Q You do have another apprentice program with another craft union, do you not?

A That is District 15, Local 447 of the machinists.

Q And what does that apprentice program consist of?

A It is a three-year program where the man comes in on a percentage basis, or the journeyman's rate and works through a schedule of increments, where he is increased over this three-year period until finally he reaches the journeyman rate, and he has been exposed to the training and completed the training successfully.

Q Do you have any opinion as to whether or not that would be feasible with respect to 15C mechanics?

MR. BRADY: I am going to object to that.

THE COURT: Overruled.

(Question read by the reporter.)

A Oh, yes, I think it could be worked out.

Q Would it take that same format?

A That seems to work for the machinists and it is the

pattern that the Connecticut local is following, so I will say it is tried and probably would work here.

Q Do you have any opinion about how long it would take to make a man a mechanic B in such a program?

A About three years.

Q And a mechanic A?

A About five.

Q Do you have any facilities now for training personnel?

A Yes. We have a full life time training director, we call him, and we have classrooms and training aids, and library films and cutaways and things of that kind.

Q Have you ever had discussions with local 15C with respect to an apprentice training program?

A Yes, we have.

Q Will you tell us what was said generally, and as best as you can recall who said it?

A Well I think they all agree that it is a good thing in spirit but in practice we really have not never gotten down to working anything out.

Q Can you tell us what the union has said, if anything, about such a program, the feasibility of setting one up or actually setting up one pursuant to the clause of the contract?

THE COURT: Which union are you talking about?

MR. DEVORKIN: 15C.

A Well, they have never refused to go along with the concept, but, on the other hand, nothing has really happened to set up a formal program, partly because they have always had people in the hall that they felt they could send out to satisfy most of our needs.

Q Have the men that they sent out always been able to satisfy your needs?

A No; as I mentioned before, about 80 percent of the time.

Q Of the men that they send out, are they always qualified for the position?

A Almost all.

MR. DEVORKIN: I have nothing further, your Honor.

MR. KENNEDY: I have no questions.

CROSS-EXAMINATION

BY MR. BRADY:

Q Mr. Meyer, do you presently now have much call for helper employment?

A No. Unfortunately right now we have been laying some people off, and the people who are laid off first are the short-timers and those with the least amount of experience, so we have no call right now.

Q In the 20 years that you have been in the employ of H. O. Penn, to your knowledge has Local 15 referred black and Spanish surnamed people for employment?

A Yes, they have.

Q And have some of those minorities been promoted to higher levels by the company?

A Yes, they have.

Q And has the union ever objected at all to the promotion of these people?

A No.

Q And you are able, are you not -- you have hired people without calling the union, isn't that so?

A On rare occasions, but let us be practical -- you know, we are businessmen and we like to have things running as smoothly as possible. You don't go around bloodying noses unnecessarily. We try to check with the hall whenever we have needs. Our needs are not panic, you know -- we don't have to have a guide within the next minute.

Q You have very little turnover?

A Very little.

Q And the union is a source of qualified people?

A Yes.

Q If you have a condition where a man has been laid off he is one of the re-hires you were talking about, if you

needed people?

A If he is still available, but I don't want to sound egotistical-- but the people we let go are usually pretty good people. They have been with us a long time -- they understand the catapillar product line -- the catapillar is the predominate machine in the construction industry population-wise, so sometimes we fellows are picked up by someone else.

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Q But if you had the opportunity you would call that man back rather than call the union for a new man.

A Yes. It is a two-way street. The fellows check with us on Monday or Tuesday and ask "What's doing?"

Q The men themselves call you?

A Yes.

Q The union doesn't object to that at all?

A No.

Q Now, did the union object to your running an ad in the newspaper for people?

A I don't think it thrilled them but they didn't object.

Q Have there been occasions when the union has sent a man to you to be tested for them?

A I am not sure I know what you are getting at.

Q Well, have there been any people that have been sent to you that were not going to be employed by you, at

least not immediately but that they were tested by you, by your company, for the union's own purposes? Do you ever recall that happening?

A I recall some discussion about it but I can't positively say we did the testing in the end.

Q All right. Now H.O.Penn runs its own school, does it not, or their own mechanics?

A Yes. We have an in-house training program, right, but it is most upgrading and skill improvement for the men that are already there who are in the higher categories.

Q What, if any, kind of formalized training do your helpers get? Do they get classroom work as well?

A No. They are eligible to come to a monthly general training session that talks about company policy and safety, and some new product, but it is voluntary on their part. Some come, some don't.

Q But most of their training is in the shop?

A It is on the job, that's right.

Q And the training program that you are talking about, in talking about what is provided for in the contract, that would be used to upgrade your own people as well, is that so?

A You are talking about the clause that says a joint effort?

Q Right.

A That would be used in effect to bring the lower class up to the upper levels, yes.

Q Your own employees?

A Own own employees.

MR. BRADY: I have no further questions.

THE COURT: You are excused; thankyou.

(Witness excused.)

THE COURT: We will take a recess.

(Recess.)

MR. GLASSMAN: The plaintiff calls Ethelbert Snaggs.

E T H E L B E R T S N A G G S, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Snaggs, where do you live?

A 936 East 223rd Street, Bronx.

Q Were you subpoenaed to testify here today?

A No, sir.

Q How old are you, sir?

A 71.

Q Where were you born?

A Trinidad, West Indies.

Q Have you in your lifetime worked on heavy construction equipment?

A Yes, sir.

Q Where did you receive your first experience?

A Trinidad.

Q Can you tell us what your first experience was?

A It was an apprentice on heavy machines, doing road building.

Q Who did you work for there?

A The government.

Q What kind of equipment did you work on?

A Road rollers, and whatever heavy equipment we had there.

Q Did you start out as an operator?

A No, I was an apprentice. I was a boy at the time.

Q What actually, the specific type of work did you do first?

A Repairing machines.

Q What kind of machines did you actually repair?

A I wouldn't recall their names now. All heavy equipment machines.

Q Did you work on any cranes and shovels?

A Yes, sir.

Q Did you work on any road building equipment?

A Yes.

Q When did you come to the United States?

A May 7, 1922.

Q About how many years experience had you on heavy equipment at that time?

A In 1922?

Q Yes?

A I guess about seven years.

Q What work did you first do when you came to the

United States?

A I worked as a mechanic, automobile mechanic.

Q When is the first time you worked on heavy equipment in the United States?

A Let's see, about 1930, I guess.

Q What kind of work did you do then?

A I worked for Hubert and Floyd on cranes and shovels but I did more of the repairs than actual working of the machines.

Q Did you ever learn to operate cranes?

A Yes.

Q Where did you learn that?

A Here. I obtained a license to operate a crane I think in 1940, 1939, one of those years.

Q When you first obtained your license or tried to obtain your license, what procedure did you follow?

A I went to the building department to get an application for the license and I was told there that I couldn't get the application for the license unless I produced a reference from a contractor stating that I worked for him at least two years.

Q Did you have any problems obtaining such a reference?

A You couldn't get it, the union controlled the contractors and you couldn't get into the union, but I was

able to get a reference from the chief engineer of the bridge across the East River that the building department operated, which enabled me to get the application.

Q Did you actually know the person who gave you the reference?

A I worked on the bridge.

Q Which bridge?

A Williamsburg.

Q What kind of work had you done on the Williamsburg Bridge?

A Heavy equipment, welding machines, cranes and shovels.

Q Did you take a test?

A Yes, sir.

Q What kind of test did you take?

A It was a written test, a form of written test.

Q And was there any practical test at the time?

A Not at that time, no, they did not give any practical test.

Q Do you know who the inspector was at that time?

A No.

Q Do you know if he was a member of the union?

A I don't know. I didn't ask him.

Q Did you pass the test?

A I did.

Q Did you receive your license right away after that?

A No. I received a letter stating that I passed the test and to come down for the license.

When I went down for it they told me that I would have to come back in a month because the chief engineer that was supposed to sign the license was not in.

I went back after that month was up and they told me the same thing. The second time I told them that I will take the letter to the DA's office if I didn't get the license, and I got it in five minutes.

Q After that how did you first attempt to get a job?

A Well, I went to the union office.

Q Which one was that?

A Local 14, at that time 49th Street and Third Avenue I believe.

MR. KENNEDY: Can you fix a time, sir?

Q Approximately what year was that, if you remember, sir?

A 1942, I believe, 1941.

Q Do you remember who you spoke to at the union?

A Yes, the secretary, Walter Murphy.

Q What was his name?

A Walter Murphy.

Q Do you know if he had a union officer or was an officer of the union?

A He was secretary of the union.

Q What did you say to him?

A Well, I asked him if I could get any work. He told me it was an union office and not an employment agency.

But I continued to go there from time to time and finally I was able to get him to send me out on a job.

Q Did he tell you anything about getting a union book?

A Told me that I couldn't get in the union because the books were closed.

Q At that time did you talk to anyone else about getting into the union?

A Yes. I talked to -- I don't remember this man's name but he was in the oilers, oilers department and I believe that was in Local 15, but I don't recall his name.

Q A black man or white?

A No, no, all white.

Q What did he tell you?

A Told me the same thing, this is a union office and not an employment agency so don't bother him.

Q Were you ever told how you could get into the union?

A Yes, sir. I was told for $1,000 I can get into the

union.

Q Who told you that?

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A Murphy.

Q Did you pay $1,000?

A No, I had no money.

Q After that did you ever go down to the union hall to try to get a job?

A Yes. And he first sent me to Rhode Island, to a union in Rhode Island and they sent me on a job in Western Rhode Island.

Q Let me go back a moment. When you first were looking for a job in the union hall, how long was it before you first obtained a job?

A About seven months, seven or either months.

Q How frequently did you go to the hall during that period?

A Nearly every week or two weeks.

Q How did you actually get your first job through the union?

A I had to make a deal with him.

Q What do you mean by that?

A I had to give him $200 and he sent me up to the union in Rhode Island and they sent me to this job.

I didn't like it and I stayed there I think two

weeks and came back and he sent me to the American Sugar Refining Company.

Q Who actually sent you to the job in Rhode Island?

A Walter Murphy. He called the union, some officer up there and told him that he was sending me and I went up there following the call.

Q Did you come back to New York again?

A Came back to New York.

Q When was that?

A About two weeks later and he sent me over to the American Sugar Refining Company.

Q Did he require any payment at that time?

A Yes.

Q How much?

A Same amount of money. I stayed on this job I think about six or seven months.

Q Mr. Snaggs, did you pay this $200 sum in one payment?

A Yes -- no -- I paid him $100 and 50 and 50.

Q Installment payments?

A Yes.

Q How did you find Mr. Murphy to make the installments?

A I knew where to find him. He was either in the union office or down in the street. He owned a saloon on the

next corner of Second Avenue and was always between both places.

Q Where was that second job you were sent to?

A American Sugar Refining Company in Brooklyn.

5-2 Q What kind of work did you do there?

A Operated a crane on unloading the coal barges.

Q How big was the crane, how many tons?

A I think the bucket was about one ton.

Q Any other black man on that job?

A No.

Q About how long did you work there?

A About six or seven months.

Q Were you laid off?

A Yes.

Q Do you know why you were laid off?

A Yes.

Q Can you tell us, please?

A Well, they sent a union man there and he told them he would work for less money than I was getting so they gave him the job and laid me off. The following week the delegate went over and told them that he was a union man and demanded more money than I was getting.

Q Mr. Snaggs, at that time when you went to the union hall, were there any other blacks you saw in thehall?

A Two, one fellow, his name was Bryant, he was an operator but he didn't work during the time that I was there

Q Do you know if he was a member of the union?

A He said he was.

Q And did he ever tell you how he got in?

A No, never asked him.

Q After the job at American Sugar Refining, did you stay in the industry?

A No.

Q Why not.

A It wasn't profitable for me.

Q What have you done since that time, sir?

A I operated a garage and gas station and I owned a couple.

Q Operated? Did you own them yourself?

A Yes.

Q Mr. Snaggs, do you still have a license to operate a crane?

A Yes, sir.

Q Do you have it with you today?

A Yes, here it is.

MR. GLASSMAN: I would like to offer this as Plaintiff Exhibit 64.

MR. KENNEDY: May I see it, please?

MR. GLASSMAN: I would like permission to substitute a copy of the license and return the original to Mr. Snaggs.

THE COURT: Yes.

MR. KENNEDY: May I have the Court's indulgence a moment?

(Pause.)

MR. KENNEDY: I have no objection on behalf of Local 14.

MR. BRADY: No objection.

THE COURT: Received in evidence.

xxx

(Plaintiff's Exhibit 64 received in evidence.)

Q Mr. Snaggs, you have not worked recently in the industry, have you?

A Recently? No.

Q You are retired now?

A Yes.

Q Why do you keep renewing your license?

A On account of the difficulty that I had in getting it. I just felt proud of having it, that is all.

MR. GLASSMAN: I have no further questions.

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Snaggs, you told us that you obtained your city license originally in either 1940, 1941 or 1942, is that

correct?

A Yes.

Q Well, one of those years?

A Yes.

Q Can you be a little bit more precise?

A I have something here that might recall. Here is a coast guard pass that was signed by Mr. Walter Murphy in 1942.

Q Does that document refresh your recollection, sir, as to when your license was issued?

A It has to be a year or two before that.

Q A year or two before that?

A Yes.

Q What refreshes your recollection that it was a year or two before that?

A Because I know that I used to go down to the union office and during the period, trying to get a job, he suggested that I go down to the coast guard, gave me a paper to fill out to go down to the coast guard to get this pass so I would be able to work on the docks in the event there was anything open on the docks.

Q Is this in connection with the American Sugar Refining job?

A No, sir.

Q Another job?

A Yes.

Q You have your license and you went down to Local 14 hiring hall, is that correct?

A Yes, sir.

Q Were there any blacks in the hall at that time, the first time you went down?

A No, sir.

Q You walked into the office, did you not? Not the hiring hall, is that correct?

A Walked into the hiring hall. The office was off the hiring hall.

Q Any other people in the hall, sir?

A Yes.

Q How many people, approximately?

A I don't know; I guess 10 or 15.

Q Who directed you to Mr. Murphy?

A Mr. Bryant.

Q Who was he, sir?

A Bryant was the black engineer who told me that he was a member of the union?

Q What did you say to Mr. Bryant at that time?

A He asked me what I was doing there and I told him I was looking for work.

Q He directed you to Mr. Murphy?

A He told me to see Murphy.

Q You went in to see Mr. Murphy and are you sure --

A No. Am I sure?

Q Yes.

A I have his card, Mr. Murphy's card. I have it about 40 years, his business card.

Q May I see that?

A I know the man (handing to counsel.) He gave me that card when he sent me to Rhode Island.

Q Now, are you saying that Mr. Muprhy asked you at that particular time for the payment of money?

A Yes -- not at that particular time, before he sent me to Rhode Island.

Q The extent of your conversation with Mr. Murphy is that you were looking for work, is that it?

A No. I was there over a period of time, it wasn't the first day I had seen him. I was going there for months.

Q You were going to the hall from time to time during the period after yougot your license?

A Yes, sir.

Q Did you speak to Mr. Murphy the first time in the hall?

A No, I didn't know the man.

Q Did you speak to anybody connected with the local 14

the first time you went in the hall?

A No, I didn't know who to speak to.

Q Who did you speak to the second time you went in to the hall?

A I don't think I spoke to anybody. The first time I spoke to anybody was when I met Bryant on the outside of the hall when I came down one day and he asked me what I wanted and we started to talk and he was the one that gave me the information as to the operation of the place, how to go about getting a job.

Q And how many times had you been in the hall prior to the time you met Mr. Bryant?

A About 10 or 15 times.

Q Over what period of time, sir?

A Probably about two months.

Q Were you working in the meantime?

A Yes.

Q Where were you working, sir?

A I was working part time doing automobile repairs.

Q How long did that job last?

A It wasn't -- I was working for myself.

Q You never asked anybody in the first 10 or 15 times that you were in the hall to speak to anybody at all?

A No.

Q On any of the occasions prior to the time that you talked to Mr. Byant were there blacks in the hall, sir?

A No.

Q Did you ever ask any of the people in the hall to see anybody?

A No, I didn't know anybody.

Q You just sat there for how long a period of time?

A Maybe about a half hour.

Q Then you would leave?

A Yes.

Q During the times that you were sitting in the hall did you see people coming and going?

A Yes.

Q Were there any announcements made about jobs?

A Sometimes, yes.

Q Yet you never went up to see one of the people announcing the jobs?

A No.

Q Now, you were referred to Mr. Murphy by Mr. Bryant, is that correct?

A I was referred to Mr. Murphy.

Q By Mr. Bryant?

A Bryant told me that MR. Murphy was the secretary of the union and to see him if I wanted a job.

Q Now, you got in to see Mr. Murphy. What did you say to him and what did he say to you?

A The first time I spoke to him was not in the office, it was in the street between Second and Third Avenue.

Q What did you say to him and what did he say to you?

A I asked him how about getting a job.

Q What did he say, sir?

A He told me that it was a union office and not an employment agency.

Q What did you say?

A Nothing, I didn't say anything.

Q Is that the extent of the conversation?

A At that time, yes.

Q Now, when was the next time you had a conversation with Mr. Murphy?

A I guess the next time I saw him in the street, I kept talking to him.

Q You would meet him outside the building, would you?

A Yes.

5-3 Q You never went to his office?

A The first time I went to his office is the day that he was sending me up to Rhode Island and he took me into the office and he made a telephone call to the union office in

Rhode Island.

Q Would you tell us the conversation that occurred between you and Mr. Murphy prior to the time he made the telephone call.

A He told me he would get me a job for $200, if I gave him $200.

Q What did you say?

A Okay.

Q Did he ask you for cash?

A I wouldn't give him a check, he wouldn't take a check.

Q Did you have $200 with you at that time?

A Yes.

Q Did you ask him for a receipt?

A No. He wouldn't give me a receipt.

Q Did you ask him for a receipt?

A No, sir.

Q You went up to Rhode Island, did you?

A Yes, sir.

Q Did you ever ask Mr. Murphy at that time whether you could belong to the union?

A I don't understand the question.

Q Did you ever ask Mr. Murphy for an application to join the union?

A Yes.

Q Did you?

A Yes.

Q During that conversation?

A Not during that conversation.

Q In subsequent conversations?

A Yes.

Q You went up to Rhode Island and what year was that, 1940 or 1941?

A No, it would be about 1942.

Q Around 1942?

A I believe so.

Q There was a period of approximately two years from the time you originally obtained the license and the time you first went to Local 14?

A Yes.

Q What were you doing between 1940 and 1942?

A Working for myself, a repair shop.

Q So you hadn't been operating any heavy equipment from 1940 to 1942, had you?

A No.

Q Now, how long did you spend in Rhode Island?

A I stayed there two weeks.

Q Then what did you do?

A I came back to New York.

Q What did you do then?

A Went back to the office and saw Murphy.

Q Still during the year 1942?

A Yes, sir.

Q What did you say to him and what did he say to you?

A I told him I didn't want to stay in Rhode Island.

Q What did he say?

A Told me that -- therewas an old man in the office that used to take the calls for jobs that the employers would call to let the union know they need somebody and he told me about this job with American Sugar Refining Company.

Q Right.

A Murphy told me he would send me over to this job and I went to American Sugar Refining Company, and stayed there, I think six or seven months.

Q Are you telling us that Mr. Muprhy charged you for that job?

A Yes, sir.

Q He did. And when did that conversation take place?

A In the street.

Q In the street?

A Yes.

Q And what did you say to him and what did he say to you?

A Well, it was the understanding that I had to give him $200 to get the job.

Q And you went to the American Sugar Refinery?

A Yes, sir.

Q And how long did you work there, sir?

A About six or seven months.

Q And were you bothered by anybody during that six or seven month period?

A No, no.

Q You testified that there came a time when you were laid off, is that right?

A Yes.

Q Did you ever return to Local 14?

A I went -- I saw Murphy, yes, after that.

Q After you got laid off?

A Yes.

Q And what did you say, sir?

A I told him that they laid me off.

Q And what did he say?

A He asked "What happened".

Q And what did you say, sir?

A I told him what I knew about the situation, that another man went to the office of the American Sugar Refining Company and told them that he is not a union man and he would work for less money than I was getting.

Q He was not a union man?

A No. That is what he told the company.

Q Right.

A And they laid me off.

Q Right.

A They gave him the job. The following week the delegate from the union went and told them that this was one of their men that belonged to the union and they would have to give him union wages.

Q Were you with the delegate at that time, sir?

A No.

Q How did you know about that conversation?

A The helper that I had on the crane told me.

Q I see. What was his name, sir.

A Oh, I don't remember now.

Q Was he black or white?

A White.

Q Was the helper unionized?

A No.

Q Do you know who the name of the delegate was that went to the American Sugar Refining Company?

A I don't think he knew.

Q But he allegedly heard that conversation, is that correct?

A The man told him, who was operating the crane.

Q And then you went back to see MR. Murphy?

A No, I gave it up. After that I didn't bother with it.

Q When did you have any conversation with Mr. Murphy about joining Local 14?

A Before he sent me up to Rhode Island, I asked him about joining Local 14 and he told me that the books were closed.

Q I see.

A Sometime after that he told me that the books could be opened for $1,000.

Q When was that conversation that he told you about opening the books?

A Oh, during the period of time that I was seeing him. I couldn't recall the months or the correct date of those things -- it's a long time ago.

Q Did you go to the District Attorney, sir?

A No.

Q Did you complain to anybody, sir?

A No.

Q And you know that Mr. Murphy has been dead for 20 years?

A I don't know that.

Q You don't know that?

A No, sir.

Q You never said to anybody that he has been dead and that you knew it?

A No, sir. The last person that I saw that knew Mr. Murphy was his brother.

Q Was who?

A His brother.

Q His brother. Who would that be, sir?

A I don't recall his name. I know that he was his brother and he was an engineer. He was working at the Polo Grounds doing some excavation for a parking lot there, and I had a garage across the street, so he came over there to park his car once, and we got into conversation and he told me

that he was Murphy's brother.

Q Now what was the condition of construction in this country and in this city in 1942?

A In 1942 -- I don't know -- the war was going on at the time.

Q It had just about ceased, hadn't it, Mr. Snaggs, because of the war?

A No, I wouldn't say it had ceased because I was sent to -- by Hubbard & Floyd to Oyster Point, Virginia, where they were building an ammunition dump there, and there was quite a shortage of operators at this time.

Q In Virginia?

A No, I was in New York. Hubbard & Floyd owned the machines.

Q Right.

A They were renting them out to the contractor in Virginia.

Q Right.

A And they couldn't get operators down there and I was sent from here to Virigina as an operator, so there was not too much of a shortage of work on account of the war.

Q Construction was in big demand in New York in 1942 -- I mean there was a lot of construction going on, according to your testimony, is that correct?

A No, no. There was different types of construction going on.

Q What types of construction?

A Well, for instance, they were building an ammunition dump in Oyster Point, Virginia, and they couldn't get anybody to go down.

Q I am talking about right here in New York. What was going on in New York, if you know?

A I don't know .

Q Isn't it a fact, Mr. Snaggs, that the only work available was on the docks at that particular time?

A I wouldn't say that. I wouldn't agree with that -- that the only work was on the docks?

Q For operating engineers.

A I am not sure, but I don't agree.

Q Now did you ever, from 1943 on, file an application for membership with Local 14?

A Never went back.

Q Never went back. Never complained to anybody, did you?

A No, sir, because I felt it was a waste of time.

Q You did. Did you go to any government agency at any time, sir, and complain?

A No.

Q None.

A It wasn't necessary. I was making a living.

Q You did not want to join Local 14?

A No, I had no confidence in them.

MR. KENNEDY: May I have your Honor's indulgence for a moment.

(Mr. Kennedy confers off the record.)

MR. KENNEDY: I have no further questions of the witness at this time.

MR. BRADY: I have no questions of the witness, your Honor.

MR. GLASSMAN: Your Honor, I have a few more questions.

First I would like to offer Plaintiff's Exhibits 65 and 66, the two exhibits that Mr. Snaggs just produced.

xxx Plaintiff's Exhibit 65 would be a card of the International Union of Operating Engineers, Local 14, Walter J. Murphy, Financial Secretary; and Exhibit 66 is the United States Coast Guard identification card for Mr. Snaggs, indicating his occupation and his employer.

MR. KENNEDY: No objection.

MR. BRADY: No objection.

THE COURT: Received.

xxx (Plaintiff's Exhibits 65 and 66 now marked in

evidence.)

MR. GLASSMAN: Your Honor, I also would like to have permission to make a copy of them for the record, and to return the originals.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Snaggs, just for the record what is your race?

A My age?

Q Your race, for the record.

A Black.

Q Mr. Snaggs, you said you spent sometime sitting in the union hall and you never for the first couple of weeks, at least, went up to ask anyone about getting work; is that true?

A Yes.

Q Mr. Snaggs, did anyone ever come to you and ask what you were doing there during that time?

A No.

Q Mr. Snaggs, after you told Mr. Murphy about the circumstances of your being laid off at American Sugar Refining Company, did he go anything?

A No. He told me to come back and see him but I never went back.

Q Do you know if he went to the job or called the job?

A No, I never seen him since.

Q You said you never complained to anyone about the payments which you made for jobs. Why was that?

6-2 A I didn't -- I didn't believe it would serve any useful purpose at the time, the way in which they spoke to you made you felt like a crime when you came out of the office.

Q And who are you talking about when you refer to "the way in which they spoke" to you?

A Oh, the man in charge of 15 -- I don't know his name, but he would speak to you like you were a dog, and I couldn't take it.

MR. GLASSMAN: I have no further questions. Thank you.

RECROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Snaggs, did Mr. Murphy treat you politely?

A Yes, sir.

Q Was he pleasant in his conversations with you?

A Yes, sir.

Q Did he ever tell you that there were black members in Local 14?

A He didn't tell me but Mr. Bryant told me there was

another man that -- there were two of them.

Q Two of them?

A Yes.

Q And who was the other black man?

A I don't know him. I have seen him once but I have never spoken to him.

MR. KENNEDY: I have no further questions.

MR. BRADY: No questions.

THE COURT: You are excused; thank you.

(Witness excused.)

THE COURT: We will adjourn until 2 o'clock.

MR. GALLAGHER: Your Honor, with your permission I will not be present this afternoon.

THE COURT: All right.

THE CLERK: Court stands adjourned until 2 p. m.

(Luncheon recess.)

A F T E R N O O N S E S S I O N

2.00 P.M.

MR. DEVORKIN: The plaintiff calls Earl Lites.

E A R L L I T E S, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Lites, how old are you?

A 55.

Q Where do you live?

A 111-11 204th Street in Hollis, Queens.

Q New York?

A New York.

Q Are you currently employed?

A Holland Construction Company.

Q What sort of work do you do for them?

A Welder.

Q How long have you been a welder?

A About 33 years.

Q Can you tell us how you first got your experience as a welder?

A I got my experience through the Navy Yard.

Q How did that actually happen?

A I went in the Navy Yard as a sheetmetal worker and transferred from sheetmetal worker to a welder and I have been welding ever since.

Q When was that?

A Started welding in 1942.

Q Were you a civilian at that time?

A Civilian.

Q Did you apply to the Navy or did they seek you?

A I put in an application in the Navy Yard as a sheetmetal worker.

Q Eventually you went into welding?

A Eventually I went into welding.

Q Did the Navy give you any training to be a welder?

A Yes. The Navy had a schoolset up and I went to the school approximately three or four months.

Q That is at the Navy's expense?

A Yes, sir.

Q Were you in a class or a group of some kind?

A Yes, there was a class.

Q How many men were in that class?

A Approximately 30, 40 men, I guess.

Q Any of the men black?

A A few of them.

Q For the record, what is your race?

A I am black.

Q How many men of those men were black?

A I guess about five or ten at that time.

Q When did you first become a welder in the Navy after that class, 1942 was it?

A 1942, yes.

Q What kind of work did you do for the Navy?

A Production work.

Q Would you describe for us what that means?

A Production work is welding in the vertical, flat and overhead bulkheads, decks, doing the welding for the electrician; that is called production work.

Q All of this is on ships?

A This is all done on ships, yes.

Q All in New York City?

A All in New York City, in the Navy Yard.

Q Were the other men you worked with civilian or military personnel?

A No, they were all civilian.

Q Did you work alone or did you work with other people, in a crew?

A We usually worked in a team in the Navy Yard.

Q How many men?

A Each supervisor had approximately 30 men, which

is his gang, they called them his gang and the gangs would be divided in groups.

In other words, a welder would work with a partner, two welders working together most of the time.

Q Did you work with any particular man or men during those years with the Navy?

A I didn't get that.

Q Did you work with any particular man or switch off from crew to crew?

A No, we didn't work with any particular -- most of the time you had one partner who worked steady together.

Q Did you have such a partner?

A Yes, I did.

Q How long did you stay with the Navy at that time?

A I started with the Navy from 1942 until 1946, after the war.

Q Were you laid off after the war?

A Yes, I was laid off.

Q Did you do anything after you were laid off?

A I welded.

Q Did you seek any other means of employment?

A Yes. In 1946 there were four of us -- five of us that welded together which was two teams of welders. I was the only black in the team and --

Q All five welded together during that period in the war?

A Most of the time, yes.

Q You knew the other men well?

A Yes, I did.

Q Continue, I am sorry. You were talking about working after you were laid off.

A Well, as I said, these four fellows, and I was the only black in this group, one of them went to the operating engineers to try to get over there and I was with them. We were partners, so the five of us were there.

Q Where did you go, Mr. Lites?

A I don't recall right now, it is a long time ago. I remember going in this building, because I was with them I didn't pay too much attention. At the time I knew, but it slips me now.

Q But did you say that was in a union building or --

A It was a union hiring hall.

Q Do you know which union?

A Operating Engineers.

Q What happened when you went into the hall?

A We spoke to this -- this particular fellow who knew someone there, that is why we happened to get to the operating engineers, he spoke to this fellow he knew.

Q Where was this hall, do you recall?

A It was in a big room, that is all I know, talking in a big room. He was doing the talking.

T2 Q Can you speak up a little, Mr. Lites?

A He was doing the talking -- the conversation was directed to this particular person.

Q Do you know who that person was?

A I can't even recall his name, no.

Q Were you speaking -- I am not sure that I understand. Were you speaking with members of the union or officers of the union?

A He was speaking to a delegate, I think.

Q And can you recall for us as best you can what was said by each of the men, generally speaking?

A He was talking about an application into the union, and the guy said that he would send us all applications to the union, and I never received an application.

Q Did the man who spoke to the group of you at the time, did you have a conversation with him?

A No. He spoke directly to this one fellow. I was just standing there. I never opened my mouth, but it was --

Q Tell us what it was like to go down there to the union.

A In those days the guy acted like I wasn't standing there. He talked to the other fellows but he never spoke to me a word; but when he said -- he took my name and my address and he said that he would send out applications, but I never received an application.

Q Do you know whether any of the other men received applications?

A Evidently they did, because --

Q How do you know that?

A Well, the war was over then, you know --

Q You have to speak up a little bit, Mr. Lites.

A The war was just about over then, so our friendship had broken up, you know. But we had been friends from '42 to '46, you know, and saw each other daily, nightly, whenever we worked, and we had becomepretty good friends, and afterthe war broke up -- after the war ceased, you know, they just faded away, I never saw them any more but I heard that they did get books.

Q After you heard that did you do anything?

A Well, I wrote a letter to the union around '46, '47.

Q Will you tell us generally what that letter said?

A I told them that I had applied for membership in the union and I had been promised to get an application

but I never received the application, and from that letter -- I never got a reply from the union.

Q And have you received any reply to that letter or that application to this date?

A No.

Q After that happened did you again look for work as a welder?

A Yes, I did.

Q What did you do?

A Well, there was only one choice for me after that, if I wanted to stay in welding, and that was to go back into the shipyard.

Q What do you mean when you say there was only one choice for you?

A I couldn't get employment anywhere else as a welder.

Q Why is that?

A I think it is rather obvious. In those days --

Q Well, tell us.

A In those days it was tough for a black man to walk into a shop -- I have walked into shops, union shops, who looked at the work that was being done, knowing that I could do a better job and was turned down.

Q Was the shipyard work desirable work or less

desirable work, or less hard work or easy work?

A It is harder work.

Q Why is it harder work?

A Well, shipyard work -- if you are working on a ship you have to go into the inner bottoms -- if I can elaborate on inner bottoms.

Q Go ahead.

A You have a manhole -- say you are in the center of the room. You may have to go down the manhole and crawl on your stomach for six blocks to do a welding job. There is no way out. It is one way. You drag your line -- your blower is the only thing that draws the smoke out while you are in that hold. You can't stand up or sit down. You have to lie on your stomach to do it. Then if a ship is hit they can close that section off.

Q You mean hit by a bomb or something like that?

A Right, right. I am talking about naval ships. Commercial ships are different. They have tankers. You have inner bottoms but nothing like you have in naval ships.

Q What kind of hours do you keep in a shipyard if you are a welder?

A For the Navy? We just worked eight hours a day, but outside --

Q When youwent back to the shipyard, after you had this experience with the union, what year was that?

A I think I went to Bethlehem Steel in '47, if I am not mistaken.

Q How long did you stay?

A About two years.

Q And what kind of hours did you keep in those days, in that shipyard?

A You had no hours. You worked until the job was completed, because they had a schedule they worked on, and they worked with a minimum amount of help, so that meant that the men had to do the work, you know -- I have seen myself go to work on a Monday morning and wouldn't see my wife any more until Wednesday.

Q What kind of work was Bethlehem doing in the shipyard in those days?

A Mostly repair work. They were doing repairs and renovation work, you know.

Q Do you remember how many men there might be a particular yard doing welding work in those days?

A Where -- in the Navy Yard or private yard?

Q In Bethlehem's yard.

A Oh, I would say around 150 to 200 men sometimes.

Q If you recall, how many of those were black?

A Well, they had -- the blacks that stuck to welding after the war was, I would say, approximately one-third of them were black.

Q What was the pay in the shipyard compared to the pay outside?

A I didn't get that.

(Question read.)

A It was less.

Q You stayed with Bethlehem until 1949, is that right?

A Something like that.

Q Did you change jobs then?

A Yes.

Q Where did you go?

A I went back into the Navy Yard.

Q And how long did you stay in the Navy Yard?

A I stayed in the Navy Yard from '49 to '65.

Q You were a civilian in the Navy Yard?

A Right.

Q What kind of work did you do in the Navy for those 16 years?

A I was strictly a pipe welder.

Q Would you describe for us what that means?

A Pipe welding in the Navy is -- well, on all pipes

I did mostly x-ray work.

Q What does that mean?

A This is where your welding is scrutinized in production. Everything that you do in the Navy, as far as pipe, is x-rayed -- x-rayed meaning that no impurities is in the metal -- the metal must be pure.

Q What is this pipe used for?

A High-pressure steam -- the catapults -- what they use to throw the plane off the ship, and it carries something 3500 pounds per square inch of superheated steam.

Q That would be on an aircraft carrier?

A On an aircraft carrier, yes.

Q Do you ever find that high-pressure steam in the City?

A They don't use that kind of steam, not that I know of anyway.

Q Did you ever go on a shakedown cruise?

A Yes, I have been on a shakedown cruise for the Navy -- Iwent two or three times for the Navy.

Q What is a shakedown cruise?

A Shakedown cruise is when a civilian goes out on a shakedown cruise, he goes out -- they understand the ship wasn't built yet, they want to test it so they call it a shakedown -- they test it. They give it full steam and

they test it, and they stop, they shut the planes off if anything goes wrong, they have their welders right there -- the qualified welders to take care of it.

Q Now, did there come a time when you left the Navy Yard?

A Would you repeat that?

(Question read.)

A Yes, I left the Navy in '65.

Q What did you do after you left the Navy?

A Well, I didn't do much of anything -- I started driving cabs.

Q Did you ever get any kind of welder's certificate after you left the Navy?

A Yes, I have a City certificate.

Q Do you remember when you got that?

A I got it here in my pocket (indicating), but I don't remember the date.

Q What kind of welding did you have to do to pass the City test?

A They give you a jib, uphill welding.

Q Is there any other kind of welding?

A Yes. Con Edison -- the welding that I am doing now is downhill. Let me elaborate on that a little.

Uphill is starting with the circumference of a

pipe. This is called 12 o'clock (indicating).

This is called 6 o'clock (indicating).

This is called 3 o'clock (indicating).

This is called 9 o'clock (indicating) on a piece of pipe -- if you can visualize what I am saying.

Uphill, it is starting at 6 o'clock and welding to 12 o'clock. Downhill is starting at 12 o'clock and welding to 6.

Q Are there any differences other than the direction you are moving between those two kinds of welding, in terms of that?

A Are there any what?

Q Any differences between those two kinds of welding in terms of speed or strength or purpose?

A Well, the downhill welding is much faster. Uphill welding is much stronger. This is my estimate anyway.

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Q Is uphill slower?

A Slower but stronger.

Q Can you tell us why you feel that way?

A What?

Q Why is this so.

A The concentration is much greater.

Q Did there come a time again after you left the navy where you sought work as a welder?

A After I left the navy?

Q Yes, sir. Did you go back into welding?

A Yes, I eventually went back as a welder.

Q When was that?

A 1967.

Q Do you remember which month?

A I think it was June of 1967 I started to work for Hallen.

Q What sort of work does Hallen do?

A Subcontractor for Con Edison, the great majority of their work, but they do other work too.

Q Is that work in New York City?

A New York City, yes, sir.

Q What did you do to get a job at Hallen?

A When I started with Hallen, how I got the job, I was driving a cab as I told you and I used to see thesetrucks

all over the street.

Well, one day I got out and walked over to somebody who was welding and asked himabout how I could get a job with the company. So he asked me was a pipe welder and I said yes. So he jotted down the telephone number and I went to the telephone and called and spoke to Mr. Burns on the phone and explained to him that I was a welder and he wanted to know my experience.

I told him on the phone and he told me to come down and take the test. When I walked into the office he seemed a little surprised that I was a black man but nonetheless Iwas there then. He gave me the test, he set the test up for me.

Q What kind of test was it?

A A pipe test and it was downhill. Now, I wasn't familiar with the downhill, I didn't know much about it. In fact, I didn't know anything about downhill. In the navy they wouldn't even allow you to strike an arc downhill.

So he set the pipe up and told me to weld it. Naturally, I went to what I know, weld it uphill. He said, "What are you going to do?" I told him I was going to weld the pipe. He said, "That way?" and I said, "Yes."

He said, "No, we don't weld uphill, downhill."

I said, I never welded downhill, welding pipe downhill.

He said, "Go ahead and weld it and let me see if you can weld."

So I welded and finished it and he said, "That is a beautiful job, I am going to hire you on the strength that you are a welder and break you into downhill."

That is how I got with Hallen but I didn't start with Hallen as a welder, I started as a welder's helper even though I had been a welder for 27 years, I started as a helper.

Q How long did you stay as a helper?

A From June until approximately September, October, something like that.

Q Did you ever take the downhill test?

A I took the downhill test.

Q That was in September?

A September, October, something like that.

Q Did you pass that test?

A The first test I took I passed, yes.

Q And did you ever get a book from Local 15?

A I eventually got a book from Local 15.

Q When did you get that book?

A My union cards says 12/7/67, initiation.

Q Let me take it back just a bit, Mr. Lites.

Whe- you didn't receive an answer to that letter that you wrote back in 1946 and 1947, did you do anything else

about trying to get into the union at that time?

A No, you know --

Q Did you ever go down to the union again?

A No, I never did. You get tired of doors being slammed in your face.

Q Will you tell us what you mean by that?

A You know, you get tired of being turned down. You know you are capable of doing the job and you know that you are capable of doing it better than a lot of people who are out there and when you get ignored and no one answers your letters that you write, how long can you take this so you take some other job, any thing. You got a young family to raise.

Q Back in those days did you ever have occasion to visit any construction sites or pipe laying sites back in 1946, 1947, 1948, 1949?

A I seen a lot of construction jobs, stopped at jobs looking at them.

Q Did you ever see any black men?

A No, never.

Q Did you ever see any black welders?

A Not in those days, never.

Q You have been working at Hallen ever since 1967?

A Yes, sir.

Q Can you describe for us the kinds of work that Hallen actually has in its shop?

A Hallen has pool work, what is called a pool. That is a certain amount of men stay in this pool and they are sent out on jobs throughout the city of New York, throughout the five Boroughs -- the four Boroughs.

This pool work is more or less service work for Con Edison. Con Edison is tieing a line into a building or running a small distance of line, that is all pool work.

Q How many men work in the pool?

A I think the pool is about 18 or 20 people in the pool.

Q What do you mean when you say service work?

A Service is if a building has to be tied in to a main in the street, that is called service.

Q What do you call repair work, the pipe that you were repairing? What would that be called?

A This is service. This could be called service. There is a difference between service and new work.

Q The repair work is pool work?

A Right.

Q How much does the man in the pool get paid per hour?

A $9.85.

Q How much do you make a week roughly, Mr. Lites?

A About 400 and change.

Q $400?

A $400.

Q Is there another kind of work that Hallen gets done?

A Hallen also has new work where new lines are being put in.

Q New lines where? Where would they be?

A All over the city.

Q How many men are doing new work for Hallen?

A Roughly I would say -- I am guessing a figure now, you can't hold me to it, about 15 or 20 men.

Q Is there any difference in pay between new work and pool work?

A Yes, there is a difference. I think new work is something like $10 and something an hour, I'm not sure of that either, but it is 10 cents or 15 cents difference, something like that.

Q Are there any differences with respect to overtime or anything like that between new work and pool work?

A In new work you get travel time.

Q What do you mean by that, paid for traveling time?

A From the garage to the job, they get paid.

Q What about overtime?

A Well, now, the overtime isbased on how bad the job

is needed. If the job is needed bad, then they work two or three hours a day overtime.

Q Do you get overtime work in the pool?

A Not since I have been with the company, no.

Q Where is the overtime if there is any?

A Always in the new work.

Q How much overtime can a man get in the new work?

A That is according to the job, how urgent the job is needed. I have heard of men putting in 12, 15 hours a day.

Q What is the pay for overtime work?

A Overtime is double time.

Q Which group of men are you in, the pool or new work?

A I am in the pool.

Q Are there any other black welders in Hallen?

A Well,one.

Q Which group is he in?

A Pool.

Q Have you ever asked to go into the new work category?

A Numerous times.

3-2 Q Why have you asked?

A I want to meet the challenge. Really I want a chance of knowing whether I can do it and more or less I would like to being it is a challenge to me.

Q Does the money have anything to do with it?

A Not really, no.

Q In response to your request has anything ever happened?

A I was told I would get it verbally but I have never gotten it.

Q Who does get this new work?

A You got a few individuals that stay on it all the time.

Q Is the work actually assigned -- one man assign the work?

A We have a dispatcher dispatching the jobs out.

Q Is he a member of the union if you know?

A As far as I know he is, yes.

Q Do you know which new man in the company gets put in the new work as opposed to the pool work? When an opening comes up in new work who gets that opening if you know?

A Well, whoever the dispatcher decides he wants to put in.

Q Did you ever see a black man get one of those openings?

A I was sent out once for a short time and that was it.

Q This new group, do they have helpers or a category like that?

A You see, when you are out on new work you have a helper. You have a welder's helper.

Q Do you have to have experience?

A To be a helper?

Q Yes.

A Not necessarily. You have to be a good listener and do what the welder tells you.

Q Have you seen any men without experience become helpers in the new work category?

A Yes, sure.

Q White or black?

A White.

Q Young or old?

A Young.

Q Do those men eventually become welders in new work?

A That is right.

Q In the time that you have been with Hallen, that is about 7 years, how many days of premium pay have you gotten?

A Maybe two.

Q If you know when Hallen needs new welders, what do they do to obtain them?

A When they need new welders they send into the union and if the union doesn't have them, then they get them as best they can.

Q Have you seen Hallen hire new welders?

A I have seen new people come in, they got to be new.

Q White or black?

A White.

Q Did anybody else at Hallen know them?

A Yes, they come in, it seems like the old timers with Hallen for years, much longer than I have been, they knew them. I didn't know them.

Q Has Hallen hired anybody recently as a welder.

A Yes.

Q Were they white or black?

A White.

Q Young or old?

A Young.

Q Do you know where they were from?

A Some of them come from the south, southwest.

Q Do you know if they were in any union?

A I think there is a union that comes out of Oklahoma known as the Pipe Liners of America and these guys, most of them are southerners, southern whites.

Q Which work group do they go into, the pool or new work?

A New work.

Q Generally speaking, how do the young men get into

the welding trade from your experience?

A It is a father-son thing, if you have a son you bring your son in and start breaking him in. They get young fellows in.

Q Do young black men get in that way?

A There is not that many blacks in there. If I had a son I could get anybody in there.

Q Is there any way that young blacks could get into the welders trade in New York?

A The only way that I can see is through a training program that would have to be set up through the union or by the company, some kind of agreement between the company and the union, to set up some kind of training program and to get those, pick up those young boys and take them off the streets and keep them out of trouble and teach them a meaningful trade and a lot of them would like to do it.

Q How do you know a lot of them would like to do it?

A Because I have spoken to them.

Q Does Hallen have any training program?

A No.

Q Do you know whether or not you pay part of your salary from Hallen into a training fund?

A What did you say?

Q Does any portion of your salary that you are getting

go into a training fund?

A Yes.

Q How does that actually happen?

A Well, we get vacation stamps and I think it is five cents a week we pay into the training program.

Q When you go to cash in your stamps they deduct some of that?

A Right.

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Q Have you ever heard the word "challenge" or a union challenge or a book challenge?

A Yes. You mean --

Q What is a challenge?

A A challenge is -- you see, if I would walk on a job site and I would see a welder working on a union job that I thought was a union job, I could walk up to him and ask him to see his union book, his union card. If I couldn't see his union card I would claim his day, I would call into the hall.

Q When you say "claim his day," what do you mean by that?

A "Claim his day"means to get paid for turning him in.

Q Have you ever done that?

A Just for my own kicks, that's all.

Q Now, Mr. Lites, have the practices that you have described to us here over the last 30 years, and the experience you have had over the last 30 years with the union, had any effect on your life, and if so, would you describe for us that effect?

MR. KENNEDY: I object to that as leading, your Honor.

THE COURT: I don't know what the purpose of it

is, but I will let him answer.

Q Go ahead, Mr. Lites.

A Well, yes, I think that -- I feel that when I was younger and I had plenty of vigor and energy, when I first went to the union and tried to get a book into the union and never heard an answer from the union whatsoever, I feel that I was deprived of a certain deal of my ability tomake a living, yes, and -- that's it.

MR. DEVORKIN: Thank you. Nothing further, your Honor.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Lites, you say that some time in 1947 you went to a union hall with four other people, is that correct?

A That's right.

Q What union hall was that, sir?

A Operating engineers.

Q Which local, sir?

A I don't know which local.

Q You don't?

A No. I didn't even know they called them locals at that time.

Q Do you know what type of work they did?

A The union you mean?

Q Yes, sir.

A No. All I know is it was a union hall. I was completely green at that time about unions.

Q What makes you think it was an Operating Engineers union?

A Because that is what this friend told me it was.

Q This is one of the people that went with you?

A One of the fellows who went with us, yes.

Q Do you know how many Operating Engineers locals there are in the City of New York, sir?

A How many locals there are?

Q Yes, sir.

A No, I don't. I don't know.

Q Do you remember what the address was?

A I don't remember that.

Q You don't?

A No. It's some 26 or 27 years ago. I don't remember that.

Q Do you know what locals that the four people that went down with you are now members of?

A No.

Q Do you know whether or not it is an Operating Engineers local?

A As far as I know it was Operating Engineers.

Q How do you knowthat, sir?

A Just through word of mouth.

Q From whose mouth, sir?

A I never -- let me elaborate on this.

Q Sure.

A After the war I told you I lost contact with these people altogether.

Q Right.

A But I met other people that knew them --

Q Right.

A -- that worked with us in the yard, and I asked at that time what had happened to these parties, and they said, well, they are working at such-and-such a place.

Q What place?

A They are working for the union, they told me, you know.

Q What union?

A Operating Engineers.

Q What local, sir?

A I don't know that. I told you that before.

Q I see. Mr. Lites, are you familiar with Local 40?

A No.

Q Have you ever answered any of the advertisements

in the newspapers to obtain a book in Local 40 for welding?

MR. DEVORKIN: I object, your Honor. I cannot imagine what Local 40 has to do with this case.

MR. KENNEDY: Your Honor --

MR. DEVORKIN: Local 40 is the Iron Workers.

MR. KENNEDY: That is true. They do welding, and they have been advertising in the newspapers for welders, and they have had welders in the union for 50 years.

MR. DEVORKIN: So what?

MR. KENNEDY: I am asking him if he was looking --

A I don't know anything about Local 40.

Q I see.

MR. KENNEDY: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. BRADY:

Q Mr. Lites, you said that you went down to this union hall with the people that you worked with. You knew them pretty well, isn't that so?

A At that time, yes.

Q What are their names?

A I don't even recall their names now. I know it was three Irish boys -- they were Irish.

Q Three Irish boys?

A Yes.

Q How long had you worked with them?

A What?

Q How long had you worked with them?

A Oh, about -- approximately three years.

Q And you don't know their names?

A I can't recall now.

Q You said --

A It is 28 years ago.

MR. DEVORKIN: I object. Let the witness answer the question.

MR. BRADY: Oh, I am sorry.

(Record read.)

A (Continuing) Close to it.

Q Now, you said you went along with them -- do you recall saying that?

A Yes, we went together -- that is what I mean.

Q But there was one particular person who was doing the talking, is that right?

A Right.

Q Did you talk at all?

A Did I what?

Q Did you talk at all in the union hall?

A I didn't open my mouth.

Q You didn't open your mouth.

A Other than give him my name and address.

Q And who did you give your name and address to?

A I don't recall who it was, I don't recall who it was.

Q Were you introduced to the man?

A We were all introduced to him, yes.

Q Mr. Lites, you actually do not know of your own knowledge whether those other men that went with you are in the union or not.

MR. DEVORKIN: Objected to as to form, your Honor.

MR. BRADY: This is cross-examination.

THE COURT: Overruled.

(Question read.)

Q (Continuing) Do you?

A Of my own knowledge?

Q Yes.

A No, not really. I haven't seen them since.

Q And you say you wrote a letter in 1947?

A 1946 or '47.

Q Where did you write that letter to?

A I wrote it somewhere in New York -- I remember it was in New York City.

Q That is the best you can recall -- somewhere in New York City?

A That's right, and I can't even recall where the hall was, really.

Q And you don't know what local number it was.

A No.

Q And when you worked in the yard, the Navy Yard, were you a member of the union there?

A They have a form of union in the Navy Yard, yes, sir, but nothing like the big unions outside.

Q How long did you remain a member of that union?

A What is that?

Q How long did you remain a member of that union?

A I was vice-president of the union at one time in the yard.

Q And how long did you remain a member?

A Quite a number of years.

Q More than 10 years?

A Yes, I guess so.

Q What was the union's name?

A Just bear with me -- I will tell you in a minute.

(After a pause) I can't recall.

Would you ask another question -- it will come to me.

Q Sure. But you were the president of that union, that local?

A No, I wasn't president. I didn't say "president."

(Record read.)

Q Oh, vice-president. How long were you vice-president?

A About a year.

Q Now when you worked for Bethlethem was that government employment?

A No.

Q Was there a union in the Bethlehem Steel Yard?

A Yes.

Q What local union was that?

A I don't recall that either.

Q Were you a member of that union?

A Yes, I was.

Q Was that a union that represented people in the outside industry as well?

A No, just the yard.

Q Just the yard?

A Yes.

Q The Bethlehem Yard.

A Just the yard, yes. I don't know the name of that one either.

Q Was it a steel workers, iron workers?

A No.

Q Was it an operating engineers union?

A It was a union that was just for the -- it was a welders' union.

Q I see.

A It had nothing to do with any other trade.

Q When you were working in the yard for Bethlehem you say you worked all hours until the job was completed, did you say?

A Yes. This didn't happen every day, but there were times.

Q You got a lot of overtime, I imagine?

A What is that?

Q You got a lot of overtime.

A Yes.

Q And then you went back to the Navy Yard in '49?

A '49 or '50.

Q Okay. So from 1947, after you wrote that letter, up until you worked for Hallen, did you attempt at all to get into any operating engineers' local?

A Not after that.

Q When would you stop at these construction jobs?

A Well, a construction job, you just lock down on

the job, that is all.

Q What period of time was this? Was this between 1949 and '65 or when?

A When I would stop at a site?

Q Yes.

A Between '49 and '65, yes, I would say so.

Q And what would you do when you stopped at the construction site?

A Just looked.

Q Did you speak to anyone at the site?

A No.

Q Just curious.

A I looked at the superintendent.

Q So you did not go over to get employment?

A No, just looking.

Q When you saw the Hallen worker, the worker on the street, when you first made your contact with Hallen, was that man black or white?

A White.

Q How did he treat you?

A That particular fellow treated me fine.

Q He gave you the telephone number, is that right?

A That is right.

Q To whom did you speak when you called?

A When I called where?

Q Hallen.

A I spoke to a Mr. Byrnes.

Q Is Mr. Byrnes the fellow that saw you the next day?

A Mr. Byrnes was the fellow that saw me the next day.

Q And was he the one that seemed surprised that you were black?

A At the time, yes.

Q What made you think he was surprised?

A The expression on his face.

Q Oh, I see.

A But he treated me like a gentleman after I got in there.

Q And he gave you a test, didn't he?

A He gave me a test, yes.

Q And was it a fact that he told you that they wanted downhill welders, isn't that so?

A What?

Q Isn't it a fact that Mr. Byrnes told you that Hallen wanted downhill welders?

A I don't know if Mr. Byrnes told me that, but someone, you know, gave me the test.

Q But that is the company policy?

A That is the company policy, downhill.

Q I am sorry, I did not hear the answer.

(Answer read.)

Q At that point in time, Mr. Lites, were you an accomplished downhill welder?

A No, I wasn't.

Q But you got the job, did you not?

A I got the job because he knew that I was a welder, that's right.

Q And at that time were you licensed?

A Was I what?

Q A licensed welder.

A I don't follow that. I know what you said, but I don't follow you. A licensed welder --

Q Were you licensed by any City, or State municipality or agency?

A No, other than the Navy.

Q You only had the Navy?

A Other than the Navy.

Q There came a time when you did get a license, Mr. Lites.

A I took a City test right after I started working for Hallen, and I obtained my City license, yes.

Q So by the time you went down to the union hall you had no license at all?

MR. DEVORKIN: I object. There is no testimony at all that he went down to the union hall with respect to Hallen.

MR. BRADY: Excuse me.

THE COURT: Yes.

Q When you went down to the union hall in 1946 you had no license?

A In '46, no, I didn't have a license, but neither did anyone else.

Q You say you were hired in June, and thereafter did you receive some training at Hallen?

A I was hired in June, yes. I practiced.

Q You practiced?

A I practiced downhill.

Q And you were on the payroll then, were you not?

A Yes.

Q And then did you not have to pass a Con Ed test before you changed classification from helper to welder?

A Right.

Q And isn't that true of other Hallen employees?

A That he must pass a what?

Q A Con Ed test.

A Right, that is the practice.

Q Now this pool of Hallen welders that you referred to, have you asked to be put in the pool?

MR. DEVORKIN: I object, your Honor. The testimony is that he is in the pool. Mr. Brady cannot twist the question around.

MR. BRADY: It is a question; it requires an answer, Mr. Devorkin.

MR. DEVORKIN: There is no testimony to support the question at all. The man said he was in the pool.

THE COURT: But did he ask to get in the pool, is the question?

MR. DEVORKIN: I am sorry, withdrawn.

BY MR. BRADY:

Q Did you ask to get in the pool?

A Did I ask to be in the pool?

Q Yes.

A No, I didn't.

Q Have you asked to do outside work, the new work?

A Have I asked?

Q Yes.

A Yes, I have.

Q Who did you ask?

A I asked mysuperior, who is Ed Logerman.

Q Larkin?

A Logerman.

Q Have you ever seen a business delegate, a business representative from the union on the job at Hallen?

A No, I haven't.

Q Do you go and attend union meetings?

A I have.

Q Do you speak to business representatives at the meetings?

A No, I never spoke to them.

Q Did you ever make any complaint to the union about being in the pool and wanting to get out of the pool?

A No, because it wasn't that important.

Q It wasn't that important?

A Not to me. It may be important to other people.

Q I see, but to me it isn't important.

A It's not that important.

Q In other words, you said that was a challenge that you wanted to --

A May I elaborate?

Q Certainly.

A He asked about the pool on the new work and I told the lawyer here that my primary reason for trying to get out of the pool into new work wasn't because of the

money; it was because of the challenge. I wanted to know that I could do the work myself.

Q I see. Did you ever tell that to any business representative of Local 15?

A I just told you I hadn't -- I never spoke to them.

Q Do you think you are not being assigned to the new work because you are black?

A Well, the proof of the pudding -- I never seen a black one out there.

Q Do you think you are not assigned to it because you are black?

A I just told you, I never seen a black one out there.

Q Have you made that complaint to the union?

A No.

Q By the way, Mr. Lites, have you seen any New York Plan trainees working for Hallen?

A Any what?

Q Have you seen any New York Plan trainees working for Hallen?

A New York Plant trainees?

Q Plan.

A I don't know what you mean.

Q You haven't seen any?

A I don't know what you mean.

Q Trainees from the New York Plan, do you recall?

A Plan?

Q Yes.

A No.

Q Are you presently receiving a pension from the government, Mr. Lites?

A Yes.

Q Tell me, do you work the same number of days --

A No.

Q -- every year at Hallen?

A No.

Q As a matter of fact, isn't it true, Mr. Lites, that you have an arrangement with Hallen where you may restrict your hours of work so that you maintain your pension?

A Yes, I do.

Q Isn't that so?

A Yes.

Q Has the union ever interfered with that arrangement?

A No.

MR. BRADY: No further questions.

THE COURT: Any further questions?

MR. DEVORKIN: I have some questions, your Honor, if I may.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q The union office that you went to in 1946, was that in New York City?

A It was in New York City, yes.

Q Was it an iron workers' office?

A No, it wasn't.

Q Do you know what the iron workers is -- do you know what the Iron Workers Union is?

A The local?

Q Do you know what kind of work they do?

A Yes.

Q What kind of work is it?

A They do structural work.

Q And at that time were you looking to do structural work?

A No.

Q Did you tell the person that was down at the office that time that you were looking to do structural work?

MR. KENNEDY: Objection, your Honor. He has testified that he said nothing when he went down to the

union. He said it three times.

THE COURT: Yes, he just stood there. His friend did all the talking.

Q You did give your name and your age, isn't that so?

A My name and my address, as I recall.

Q Did you tell him you were a welder?

MR. KENNEDY: Now,your Honor, please, I have had an objection to this leading of the witness who has answered three times.

THE COURT: Well, the Court can take into account the leading.

MR. KENNEDY: But it is also a question that has been asked three times and answered three times.

(Question read.)

A Did I tell who I was a welder?

Q The man at the office that you went to in 1946.

A Well, all four of us were welders. It was obvious we were welders.

Q The man among the group that you went with,what did he say about the group of men that was coming to the union, if you remember?

A The man who was doing the talking?

Q Yes.

A He said, "These are my welding partners."

Q Did he say what kind of welding?

A No, not as I can recall.

Q Did he say where you had worked?

A He knew that we were coming out of the Navy Yard, all of us.

Q Did the man who was doing the talking on behalf of your group say where you had worked?

A Yes.

Q Do you know who the president of the union was that you went to at that time?

A I can't recall the union -- you mean the president of the union?

Q Yes, sir.

A I can't recall. Go ahead, maybe I will remember it.

Q Was it Smith?

MR. KENNEDY: Objection.

MR. BRADY: Oh, your Honor --

MR. DEVORKIN: I can refresh the witness's recollection. If it wasn't Smith he would say so.

MR. BRADY: Why don't you get up on the stand and testify?

MR. DEVORKIN: Mr. Kennedy went into the fact --

THE COURT: He went into the fact that --

MR. DEVORKIN: Mr. Kennedy cross-examined the witness.

THE COURT: I know, but that was not brought out on direct.

MR. DEVORKIN: That is what I am trying to establish, that he did in fact did --

THE COURT: Now you are trying to show that, but on direct examination you brought out that he did not remember. But go ahead.

MR. DEVORKIN: I think, your Honor, my only point -- I am trying to bring out at this time it is that Mr. Kennedy did examine the witness as to his memory --

THE COURT: Go ahead.

BY MR. DEVORKIN:

Q Do you remember if the president's name was Smith?

A No, it wasn't Smith.

Q Was it Delaney?

A It sounds like Delaney, yes. It was a real Irish name, I know.

Q Do you know whether it was Delaney?

A It sounds much like -- I think it was Delaney.

Q When you wrote that letter who did you address

the letter to?

A I didn't address the letter to anyone. I just addressed the letter "To Whom It May Concern."

Q Well, what I mean is, where did you send the letter?

A The address?

MR. KENNEDY: Your Honor, he has already testified to this.

A The address?

THE COURT: Now we know why the letter wasn't answered.

Q Not the address, Mr. Lites -- the organization that you sent it to, do you recall that?

A Operating Engineers.

Q Do the men that work for Hallen have to take any tests after they have begun work?

A After they get the job?

Q Yes.

A We are required to take a test every six months.

Q Do all of the men have to take this test?

A Everyone.

Q Including the new men and the pool men?

A Everyone.

Q The same test?

A The same test.

Q In response to some questions that Mr. Brady asked you I think you testified you hadn't complained to the union about your assignment of work at Hallen.

Is there any reason you haven't complained to the union.

A There was really no reasons. I just, I don't know, I guess I took the attitude that forget about it. There was really no reason.

I imagine if I went to the union with it I would probably get some kind of reaction from the union but I never went to the union with it.

MR. DEVORKIN: I have nothing further.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will take a short recess.

(Recess.)

MR. DEVORKIN: I would like to call one of the employers out of turn. He couldn't get here until this afternoon.

Mr. Napoli.

F R E D N A P O L I, called as a witness on behalf of the Plaintiff being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Napoli, how are you currently employed?

A I am a supervisor for L & J ConcreteCorporation.

Q What kind of work does L & J do?

A It is in blasting and demolition of concrete.

Q In New York City?

A New York City.

Q Do you employ any persons from Local 14 or Local 15 of the operating engineers?

A Yes, sir.

Q What kind of machine does L & J Concrete Corporation have?

A Compressors and cranes.

Q What kind of cranes?

A Truck cranes.

Q When you need an operator in New York City what do you do to obtain him?

A I have a preferred list and I apply to that list that I have.

Q Where does the list come from?

A From the years of experience I have had in the business I have acquired a list of experienced engineers and I go back on that list.

Q Have you ever hired non-union men?

A Now, not that I know of.

Q Do you know what would happen if a non-union member was sent to the construction site?

A What was that again?

Q Do you know what would happen if a non-union member was sent to the site?

A I haven't the slightest idea what would happen.

Q Were you interviewed by FBI Agent Michael Hayes on September 10, 1974?

A There was an FBI man but I don't know what his name was.

Q Was it on September 10, 1974?

A Possibly was that day.

Q Did you answer some questions that he asked you?

A Yes.

Q Did you answer them truthfully?

A Yes.

Q Do you recall answering a question which you said, "If a non-union man was sent to the construction site and the master mechanics saw this individualand he did not have a union card, he would turn him away."

A Yes.

Q Was that true?

A To my knowledge, yes.

Q Do you also recall advising Agent Hayes that you always contacted Local 14 or 15 as the need for men arises?

A Yes, when I need men, yes.

Q Is that true?

A Yes.

MR. DEVORKIN: Nothing further.

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Napoli, prior to today did anybody from my law firm contact you and talk to you?

A No.

Q Did anybody from Local 14 contact you and talk to you at all?

A No.

Q Mr. Napoli, you were talking about a preferred list. Those are operating engineers from one local or another who have worked with you in the past?

A Yes.

Q Is it your practice from time to time when you need engineers to call people that you know who have worked with you?

A Right.

Q Does the union object to that?

A They haven't said anything so far.

Q Are there other occasions when you do call the hall and ask for an engineer to be sent, isn't that correct?

A Yes, sir.

MR. KENNEDY: I have no further questions.

MR. BRADY: No questions.

THE COURT: You are excused, thank you.

(Witness excused.)

MR. GLASSMAN: Oswald Charles.

O S W A L D C H A R L E S, called as a witness on behalf of Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

arcg 6 Charles-direct

Q Mr. Charles will you speak up and speak slowly, please.

Where were you born?

A Trinidad.

Q When did you come to the United States?

A 1968.

Q Are you a citizen?

A No, not yet.

Q Where are you presently working?

A Anchor Blasting Company in Long Island City.

Q What kind of work do you do for them?

A Laying pipe line and repair pipe line, repair motors and general maintenance.

Q Is that a job with Local 14 or 15?

A No. That is not a union.

Q Have you ever worked on construction equipment?

A Yes.

Q When did you first get any training on construction equipment?

A It happened when I went in Trinidad, I started first in the trade with Woodford Lodge.

Q What year did you first start working for Woodford Lodge?

A I started about 1938, 1939, sometime around there.

arcg 7 Charles-direct

Q What kind of work did you do for them?

A Well, of course, working in the diesel engine department, repair. Then I was sent to the tractor department. After the tractor department I was sent out to learn to operate cranes.

Q Were you in any kind of training program?

A Yes. At night they had a class after the work that you did in the day, they would revise on the blackboard at night to make sure that you actually understand what you did.

Q About how long did that program last?

A Roughly six months.

Q You said you learned to operate equipment as well?

A Yes.

Q What kind of equipment did you learn to operate?

A It was a crane.

Q How did you learn to operate a crane?

A I was sent out by the boss of the shop inasmuch as I knew something about the internal repair work, he figured I would make a good operator, so he sent me out there. I sat by the operator and he showed me how to run it.

Q About how long totally did you work for Woodford Lodge?

A I worked there about until 1942 when I went to the United States base for a job. From then I worked there all

the time until --

Q You went to a United States base for a job?

A Yes.

Q What kind of base was this?

A It was the United States Air Base?

Q Who did you work for at that base?

A Walsh and Driscoll Construction Company.

Q They were contracting for the --

A For the United States Government, yes.

Q About how long did you work there?

A Well, maybe four or five years.

Q What kind of work did you do there?

A Repair work, repairing cranes and tractors

Q What kind of cranes did you repair?

A Link Belt, Lorraine Cranes, Link Belt Speeder Crane, Northwest. I forget the names.

Q Did you work on earthmoving equipment?

A Tractors, scrapers.

Q Who did you work for after Walsh and Driscoll?

A I went to work for a company in Port-O-Spain, that is J. N. Harriman Company.

Q Was that in Trinidad?

A In Trinidad.

Q What kind of work did you do there?

arcg 9 Charles-direct

A Both operating and repairing.

Q What kinds of equipment were you repairing?

A It was 37 B.

Q What is that?

A A Bucyrus Erie Crane.

5-2 Q What kind of equipment did you operate?

A The very crane I repaired, I run it, drag line.

Q Who did you work for after Harriman?

A Frank Kerry and Company.

Q What kind of work did you do for him?

A First started to operate a crane for him, the first one he bought. I started to operate that for him.

Q What kind of crane was that?

A It was a Ruston Bucyrus 10B.

Q How big a crane is that?

A 10B, usually a ten ton crane.

Q About how long a boom?

A It had a 75 foot boom.

Q You said he had one crane when you started. Did you work on any other equipment there?

A Yes, he bought -- during the period of time I was there from one crane he had nine when I left.

Q Did you continue to work as an operator the entire time?

A Well, no. Off and on I was made superintendent of the plant after I broke in the oiler to run the rig. I was made superintendent of the plant.

Then I had a class as the crane started coming in, new ones started coming in, I had to train men to run the rigs.

Q About how many people did you have working for you at any one time?

A The beginning we had 25 men but eventually going up to 60 as time grew on.

Q How did you train other people on operating equipment?

A Well, in my spare time -- we run the plant during the day time and in the afternoon I would sit with a guy, new guys and show them what to do.

Q About how long did you work for Kerry?

A About 15, 16 years.

Q When you left Kerry what kind of equipment, cranes did they have at that time?

A They had a 54B, bought two 54 B's and cranes from England, VXL and link belts he had too.

Q What kind of a crane is the 54B?

A A Bucyrus crane.

Q How big a crane is that?

arcg 11 Charles-direct

A The bucket on that crane when using a drag line is two and a half yards.

Q About how long a boom did that crane have?

A Under 50 feet.

Q Did you train people to be operators or mechanics or what did you do?

A More operators because the majority of the people that come in have already been experienced mechanics; just a few things we have to show them.

Q In your experience about how long would it take to train someone to be a mechanic?

A I would say maybe about a month or two. The guy would get in line with this, with the technical part of it as soon as you show him.

Q How long would it take to show someone how to operate the crane?

A It might take about an extra month because the operators have to learn the technique of the crane. He must be able to dig where he can't see. It is a matter of feeling, you can't see down in water, so you have to dig and make sure you bring your bucket up full at all times.

Then it is a matter of swinging a load without tipping the rig.

Q I show you Plaintiff's Exhibit 67 and 78 for identi-

fication. I ask you if you can identify those, please?

A Yes. These were sent to me by my foreman, I used to work there, from Kerry.

Q What are they?

A Those are that nobody knows me here so you have to get something that somebody would know me, what I can do and know how much I know. So I sent for these papers to present them to the union or whoever it is.

Q What kind of information are in those two exhibits?

A It says, this one says --

MR. KENNEDY: Don't they speak for themselves?

MR. GLASSMAN: I am just trying to identify them.

THE COURT: They are received.

xxx (Plaintiff's Exhibits 67 and 68 for identification received in evidence.)

Q Mr. Charles, after you came to the United States did you ever make use of those letters?

A I used them once at the union.

Q When did you use them, about what year?

A About three years ago.

Q What union did you go to use them?

A 14A and 15.

Q When you went there what did you do with those letters?

A I showed it to the gentleman when I went in the hall. Then I told him I want to get enlisted in the union, to be a member of the union.

Q Do you remember his name?

A Garret.

Q What did he say to you?

A He said he didn't have anything for me to do there. Then he asked me if I had a license. I told him no, I didn't have a license.

He asked me if I were a citizen. I said no, I am not a citizen.

I asked him if he had mechanics work for me to do. He said no, they didn't handle it, so that was it and I came out.

Q Did you first ask him for work as an operator?

A Yes. He asked me if I had a license. I didn't have any.

Q Why did you ask him for mechanics work?

A Because I can do mechanics work as well, even if I can't get one I liked to do the other.

Q When you first came to the United States how did you try to find a job?

A I saw some tractors working one day down in the street, I saw a tractor operator, a colored guy and so I

approached him and asked him how could I get a job for running one of these things or to repair them or something like that.

The guy told me it is very difficult to get a job in this business. So I said how do you mean? He said it is just hard to get a job, you don't get a job so easy, you have to go to the union and that is what he told me. I went away.

Q Did he tell you any procedure you should follow to get in the union?

A He didn't tell me anything more and I went.

MR. KENNEDY: Was this at a job site?

MR. GLASSMAN: Yes.

MR. KENNEDY: Thank you.

T6

Q Did he tell you any particular qualifications that you have to have?

A No, he didn't tell me anything, no. That's all he told me -- and the guy finished with me and went away. He just gave me as little information as possible.

Q Was he white or black?

A He was black -- yes, a black guy.

Q Do you know if he was a member of the union?

A I don't know, but I think he was.

Q When did you first go to the union hall?

A That was about three years ago, down in 14th Street.

Q Was that the time that you had the conversation that you described earlier?

A Yes, sir.

Q Did you ever return to the union?

A No, not there. I went to another place.

Q Where did you go?

A Up at -- I was sent up close to Kennedy Airport. I was sent up there for a test.

Q Who sent you there?

A Joint Apprentice Program people sent me there, because I went to them for a job.

Q Is that a black organization, do you know?

A Yes, yes.

Q And you say you went to Kennedy Airport. Was that a union facility, if you know?

A Yes, they sent me up there to that union facility.

Q Who did you speak to when you got there?

A I spoke to -- Oh, yes, we spoke to Mr. Dan Murphy -- that's the guy.

Q What did you tell him?

A We told him that we were sent there to have a test, crane, tractor test.

Q What did he say to you?

A So that we could get into the union, so they gave us a test.

Q On what kind of equipment did they give you a test?

A On a tractor, on a front-end loader, and a back-hoe.

Q Did he give you a test on a crane?

A No.

Q Did you ask to get tested on a crane?

A Yes, but he said that belonged to another union -- I don't know what number it was -- the crane belonged to another union, so I didn't get a chance to show what I could do on a crane.

Q Did he tell you how to get a test on a crane?

A No.

Q Did he tell you anything about getting a test on a crane?

A No, he told me it belonged to another union. I don't know what number he said -- some other number.

Q Were you the only one taking the test at that time?

A No, there was several others taking the test.

Q Did he pass you?

A No, we all failed the test.

Q Do you know if you did better or worse than the otherpeople taking the test?

A Well, to be truthful, I was looking on all the time. There was one guy in front of me -- he was first on the tractor, and I was second after the guy on the tractor -- that I know. He was first and I was second and yet we all failed. But I think that guy is working now -- I don't know.

Q After you failed the test did anyone tell you anything?

A Well, what they said was we are supposed to operate every piece of equipment on the lot, that is, before you can pass the test.

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Q And how many pieces of equipment were there?

A Oh, there were about eight pieces, of different kinds.

Q Did you go back there to train on other equipment?

A Yes, because they had a class every Saturday, and the guy -- Mr. Murphy said, "You know what, you guys will have to come in to the school and get a little brush-up before you can get on a piece of equipment," which we quite agree, because for years if you have been running a particular equipment you want to go there and get a little brush-up, but the point was to get in there.

Q Did you go back to get in the class?

A I went back every Saturday. I spoke to him time and time again when I saw him, but to no avail -- nothing happened. He said, "You can't go in front of another guy," and I agreed, but I went there for months and nothing happened, so I stopped going.

Q He never put you in the school?

A No, not up to now.

Q Did Mr. Murphy say anything to you about getting a job during the time you were going to school or trying to go to school?

A Well, he said, "Come back next Saturday and we will see if we can get you in the school," and I kept coming

back.

Q Did he tell you to go to the union hall?

A No, he didn't tell me to go to the union hall. Not only that, I didn't have a license, so I couldn't go to the union hall anyway even if I wanted to -- I didn't have a license.

Q Did you ever attempt to get your license before last year?

A Yes, I did try to get it before, but I was told by the personnel office that you have to be an American citizen before you can get a license.

Q I show you Plaintiff's Exhibit 69 for identification, and I ask you to identify that for us (handing).

A (After examining) Yes.

Q Will you tell us what that is?

A Well, this says that you can't --

MR. KENNEDY: Your Honor, I have to object to these things. He asked him if he can identify it.

THE COURT: Yes. See if you can tell us without reading it.

A Yes.

Q Is that letter addressed to you?

A Yes, it is addressed to me.

Q From the City of New York, Housing and Develop-

ment Administration, Office of Equal Opportunity, to Mr. Oswald Charles. I offer that in evidence.

MR.KENNEDY: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibit 69 received in evidence.)

BY MR. GLASSMAN:

Q Mr. Charles, did you ever again apply for a license?

A Yes,I did.

Q What made you apply later on?

A I received a phone call one day from Mr.McHugh.

Q Who is Mr. McHugh?

A Mr. McHugh is the United States Attorney -- was, I think.

Q And what did he tell you?

A Well, he told me that there was a case going forward between -- let me see -- within the government, trying to get immigrants to have the opportunity of having a license, and the time to apply is now.

Q Did you apply for a license thereafter?

A So the following day I applied -- I went down and applied for the license.

Q Do you now have a license?

A Which I now have, yes, sir.

Q I show you Plaintiff's Exhibit 70 for identification and ask you to identify that for us (handing)?

(Witness examines.)

Q Is that your license?

A Yes, this is it.

MR. GLASSMAN: I offer that in evidence.

MR. KENNEDY: I have no objection.

THE COURT: Received.

MR. GLASSMAN: I would like to submit a copy of that instead of the original, your Honor, if I may.

MR. KENNEDY: No objection, your Honor.

xx (Plaintiff's Exhibit 70 received in evidence.)

BY MR. GLASSMAN:

Q Mr. Charles, after you received the license did you attempt to get work in the construction trades?

A Yes.

Q What did you do?

A I went up to Northern Boulevard -- I went up to Operating Engineers and I presented the license, plus the recommendations --

MR. KENNEDY: May we fix a date, Mr. Glassman, when he went?

MR. GLASSMAN: I will ask him.

A -- and the recommendations.

Q When did you go to the union hall?

A Last Tuesday.

Q Do you know who you spoke to?

A I can't remember the gentleman's name -- anyway, I spoke to him by the window. I can't remember hisname.

Q Where did you speak to him at?

A Just by the window, at the window.

MR. KENNEDY: Would you identify the union?

MR. GLASSMAN: I think the witness has said it was the Operating Engineers.

MR. BRADY: We have two locals.

Q Mr. Charles, do you know what local of the union you went to?

A Well, I was told 14 was the one with the cranes, but I don't know, when I took the test, I took the test for crane, tractor, and also compressor -- I took that. I had to do three things before I got the license.

Q Last Tuesday when you went to the union hall how did you know who to speak to?

A Well, I just went to the door, to the window, and I talked to the gentleman. He came to me and I spoke to him and showed him my papers -- told him I got this here

(indicating), and so on, and I would like him to go through them to see if he can do something for me.

Q What did he tell you?

A Well, he said -- he took the papers from me -- no. He asked me, "Why did you take so long to come here? You have been here since 1968?"

And I told him I was trying to get here all the time but I couldn't get in because I didn't have a license, so I said,"It took me all this time to get a license. Now I have received a license, so I come in to see if I can get in."

Q Did he send you to a job?

A No. He hadn't anything at the moment, so far as I can see, but he told me that he would try to do something for me -- he would give me a shot, he said -- he would give me a shot.

So I said, "All right," and I sat down and waited, but nothing came up so I went out. And he took my number that he might call me in the event that he had something.

Q Has he called you?

A No, he hasn't called me.

Q Have you asked him about getting a union book?

A Yes. He told me -- he told me, "First you have to get a permit, to make sure that you can work" -- in other

words, to please him, I believe, so I got a permit for which I could go to work, and afterwards I can get a union book.

Q You haven't got a book yet?

A No.

Q Did he give you an application?

A No, I haven't filled in any application.

Q Would you like to be a member of Local 14 of the Operating Engineers?

A Yes, of course.

Q Why would you like to be a member?

A Well, there's where I feel I best belong, because having all this experience, I think that is where I can prove myself much better.

MR. GLASSMAN: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Charles, you came to this country in what year, sir?

A '68.

Q So that you will understand what I am talking about, I represent Local 14.

Did you ever apply to Local 14 for a job between 1968 and 1974?

A Yes.

Q When?

A I went some time -- it was about three years ago roughly -- roughly three years ago. I don't remember exactly what date, but it was three years ago.

Q This is when you spoke to Mr.Gerity?

A Yes.

Q Did you speak at all to Mr. Wade? Is that name familiar to you?

A Wade?

Q Yes. Did you ever speak to Mr. Wade?

A No. I spoke to one gentleman there.

Q Just to Mr. Gerity?

A One man alone.

Q Yes.

A And he spoke with the others.

Q Right, and that is when the question of the license came up, was it?

A Yes.

Q I see. That was the only time you were in the hall that year, is that right?

A Right.

Q So between 1968 and 1971 you never came to the Operating Engineers hiring hall, is that correct?

A Well, no, I didn't go back.

Q And then you told us that you obtained your license finally.

A Yes.

Q Now last week --

A Oh, no, no, wait a minute, you are running a little too fast.

I did go back to the union but not in that particular spot -- not in 14th Street. I went up to Kennedy Airport.

Q Northern Boulevard?

A I went to Kennedy Airport.

Q That was to be tested, though, was it?

A Right, sir.

Q I am talking now about visiting the union hall.

A Oh, I see.

Q Okay? So three years ago you visited the hall on one occasion?

A Uh-huh.

Q Then last Tuesday you came in?

A Uh-huh.

Q And you came up to the window?

A Uh-huh.

Q And you spoke to a man with gray hair?

A I can't remember what he had. I don't want to commit myself. I just spoke to a gentleman.

Q I am just asking you whether you recall. You handed him your papers; right?

A Uh-huh.

Q And he looked at them.

A Uh-huh.

Q And he asked you if you had a license?

A Uh-huh.

Q And you showed him you had a license, isn't that correct?

A Yes.

Q And you asked him about work, isn't that correct?

A Yes.

Q And he said he did not have anything at the moment.

A Yes.

Q And there were other men sitting down and waiting at the time, weren't there?

A Yes, there were men, of course.

Q And were some of the men black?

A Yes.

Q He also told you he would give you a shot, didn't he?

A Right, he did.

Q And he took down your name and telephone number; right?

A Yes.

Q And he asked you to wait?

A Yes.

Q And you waited about half an hour, didn't you?

A No, no.

Q How long, sir?

A I was there -- I waited a half a day there. In fact, when they closed the door and took the lights out I walked out behind the gentleman.

Q Mr. Charles, you arrived there at 8.30 in the morning, is that correct?

A 8.30, yes.

Q What time did the hall close, sir?

A What time did they close the door?

Q Yes.

A That was around 12 o'clock -- around 12 o'clock.

Q And you were there consistently --

A Uh-huh.

Q And were the other men there, too?

A Yes, some of them left, and some, you know --

Q Stayed?

A I stayed until then.

Q And were there both black and white men in the hall when they closed the door?

A Yes, both black and white.

Q Now you asked about becoming a member?

A Uh-huh.

Q Of Local 14, is that correct?

A Uh-huh.

Q And what did the gentleman tell you?

A He told me I have to get a permit first.

Q Right, to see whether or not you can properly operate the equipment, isn't that right?

A Right.

Q Did you ask him about obtaining an application?

A Yes. Well, he told me that -- he took my -- what do you call it? -- he took my telephone number and told me that he was going to call.

Q Right.

A That is what the man said.

Q Did he ask you what pieces of equipment you had operated and how long you had operated them?

A No, because he had --

Q The two letters?

A The recommendations -- yes, that talks for itself.

Q But isn't it a fact that he asked you how long you operated some pieces of equipment?

A No, he didn't.

Q When was the last time you operated a crane, sir?

A I operated a crane last year when I was in Trinidad. I went home on vacation, and I made it my duty to go to this very job I was working, on that 54-B and did my thing.

Q How long did you operate, sir?

A You mean --

Q The crane?

A The crane, when I went home?

Q Yes.

A I did that for about three hours, just to get back into the thing, and that is all the time I needed.

Q What kind of work was it on?

A Dragline.

Q Did you get paid for the day?

A No, I didn't get paid for the day. I just went in there -- in fact, the boss still wanted me to work for him.

Q I see.

A Right, so I go in there, and he said can I operate -- "Let me see you."

He was standing there, and I was running the rig and he said, "You didn't miss anything."

Q Prior to 1974 when was the last time you operated a crane?

A From last year?

Q From last year --

A To now?

Q No, back further, back to 1970.

A Back to 1970?

Q Right.

A Well, that was just about three years. You don't lose your hand with that.

Q Did you ever operate a crane in this country, sir?

A No, I never operated a crane in this country.

Q Did you ever operate any hoisting equipment in this country?

3 A No, because I haven't got a license -- I cannot do it. It is against the law.

Q Did you ever operate since you have gotten your license, with respect to a crane or hoisting equipment?

A No, I haven't been out -- I had to run a lift. When the lift gives trouble I go and pick things up and move around.

Q When you spoke to the business agent of Local 14 he told you that is why you had to go out and get a permit first, didn't he?

A Yes, that's what the man said.

MR. KENNEDY: I have no further questions.

CROSS EXAMINATION

BY MR. BRADY:

Q Mr. Charles, was it Recruitment and Training that sent you out to Kennedy Airport?

A Yes.

Q Is that the name of the organization?

A Yes.

Q And do you recall who you spoke to at Recruitment and Training -- Mr. Roffles, perhaps -- Dan Roffles?

A No -- some Johnson the guy was.

Q Johnson?

A Some Johnson it was.

Q And he sent you out to Kennedy Airport for the testing?

A Yes.

Q Now do you recall what the test consisted of?

A Yes, running a D-7 tractor.

Q Did you have certain tasks, jobs to perform within a period of time ?

A Well, the time wasn't anything, but they just want to see if you really know what you are talking about, as you say you are an operator.

Q Did you operate a backhoe out there?

A Yes, I operated a backhoe out there.

Q Did he require you to dig a trench?

A Yes.

Q Within a period of time?

A Yes, I dug a trench.

Q And was it a 200-foot trench?

A I don't know. I saw a large trench there.

Q How long did it take you to dig the trench, do you remember?

A I don't know how long -- all you had to do is, you go on the equipment and just see what you can do. They didn't have any specific time limit but they just want to see what you can do.

Q Didn't you have to dig a trench of a particular length --

A Yes, I started digging.

Q Didn't you have to back-fill that trench for him after that?

A No, I was levelling up -- another place with the bulldozer.

Q Didn't you have to load a truck with a bull-dozer?

A Yes, we did that.

Q And wasn't there a time limitation on that?

A I don't know. They didn't say that.

Q Well, were you given a copy of the test -- I will show you this and ask you if you recognize it --

First will you please mark this for identification.

(Defendant Local 15 Exhibit A marked for identification.)

(The clerk hands to the witness.)

BY MR. BRADY:

Q Is that your signature on that, Mr. Charles?

A Yes, that is my signature all right.

Q Do you remember seeing that before?

A Yes.

Q Doesn't thatdescribe the test that you took that day?

A This describes the test, yes. I just drove three of these.

Q There are only three tests?

A No, but we didn't use this one (indicating) -- we didn't use the rubber tired one. We used the tracks.

Q Rather than the rubber tires?

A Yes, one on tracks; there was a bulldozer, and the backhoe.

Q And you did those three tests, though?

A Yes.

Q Okay. So you did not have to operate all the equipment on the job, did you?

A Well, we were told after a while -- now I will tell you something, one of the --

Q Just answer my questions, if you will, Mr. Charles.

MR. BRADY: I would like to offer it in evidence, your Honor. I do not have copies yet, but I will make copies (handing to Mr. Glassman).

MR. GLASSMAN: No objection.

MR. KENNEDY: No objection.

THE COURT: Received.

(Defendant Local 15 Exhibit A received in evidence.)

MR. BRADY: If I may, your Honor, I would like to take that exhibit and make photocopies.

THE COUPT: That is all right.

BY MR. BRADY:

Q And after you got the results of the test, Mr.

Charles --

A Uh-huh.

Q -- you were told you needed a little more experience, isn't that so?

A We needed a little brush-up.

Q Brushing up?

A Yes.

Q And you agreed with that?

A Of course you need a little brush-up. If you didn't drive a truck for a long time you need a brush-up. You take it around the block and you are back there.

Q When was the last time prior to December, 1972, when you had operated backhoe -- the last time prior to 1972, December, that you had operated a backhoe?

A Quite a while.

Q Quite a while?

A Yes.

Q How about a bulldozer?

A A bulldozer, about half the time -- about half that time.

Q What time is that?

A Well, let me see -- a bulldozer was three years after -- in fact, a friend of mine gave me a little run-around on a tractor.

Q Just a runaround on a tractor?

A Yes.

Q But the bulldozer, when was the last time you worked on the bulldozer?

A Not since I came out of Trinidad.

Q And how about a pay loader -- when was the last time you had run a pay loader before?

A Not since I came back from Trinidad.

Q Now, weren't you advised that you could put your name on the waiting list for the school?

A My name?

Q On the waiting list for the school.

A Well, it was, it was all the time, but nothing happened up to now. It is still on the waiting list.

Q So that so far as you know your name is on the waiting list?

A That is what I know.

Q And you were told there were a lot of people ahead of you, weren't you told that?

A I am still waiting.

Q Weren't you told there were a lot of people ahead of you?

A Yes, that is correct.

Q When you were out there did you see other black

out there?

A Oh, yes, there was some of them, sir.

Q Andwere they in the training plan?

A They were in the training plan, yes.

Q So you see that you do have to wait your turn --

A I am still waiting up to now.

Q -- correct?

MR. BRADY: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

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REDIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Charles, referring to Defendant Local 15 Exhibit A bearing your signature, do you know if you signed that before or after you took the test?

A This was before I took the test. Before.

Q You testified earlier that you thought you might have needed some brushing up on equipment when you took the test?

A I agree.

Q How much brushing up do you think you needed?

A About two Saturdays in the school to straighten me out. That is what I needed.

MR. GLASSMAN: I have no further questions.

RECROSS EXAMINATION

BY MR. BRADY:

Q Mr. Charles, who was present when you signed your name to that?

A Who was present?

Q With you.

A There were lots of people, two or three people in the hall, right in the corridor. Some other guy close to me, John I think his name was.

Q John Henry?

A Yes.

Q Was this blank when you signed it?

A What?

Q Was this blank, not filled in when you signed it?

A You got to fill it in.

Q No, was that form filled in when you signed it?

A That I can't remember.

Q You say that was before you were tested?

A Yes, I think, I can't remember this. Listen to me, we didn't see this paper, you know.

Q You didn't see this paper?

A No. This is marked "Failed," but we were told that.

Q Never saw that paper?

A No, all we know was to sign this, so there is writing, somebody else right here, somebody else wrote this out afterward. This is the first time I have seen this thing after we passed the test.

Q Did you ask anyone?

A I didn't ask anybody because they don't pay you any mind.

Q They didn't pay you any mind out there?

A No. What really happened is this --

Q Wait a minute.

A I didn't see this paper again since after we signed the paper and this thing, after was the test, this was filled in.

Q They didn't pay you any mind at the school? Pay any attention to you out there?

A After that I went back.

Q Just a minute. How long were you out there?

A I was out there, we spent all afternoon out there. We hung around a while.

Q How long did it take you to do the test?

A Roughly, maybe, we can do this test -- there were about nine people there. We took us about two hours maybe, two or three hours.

Q Who else was present taking the test? Do you know any other names?

A John Henry was one, I know.

Q Did you ask any questions about what that paper meant before you signed it?

A No, I didn't ask any questions.

Q Did you sign any other papers there that day?

A I do believe that I did. I can't remember now, but I probably did.

Q Did you read this paper when you signed it?

A Yes, I read it here and signed it.

Q But you didn't raise any objection to signing before you were tested?

A They gave me the paper, everybody else signed, so what am I going to do?

Q What time of day did you sign?

A In the morning.

Q You weren't shown this paper again?

A We didn't see this paper again.

MR. BRADY: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

MR. DEVORKIN: Perry McQueen.

P E R R Y M c Q U E E N, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. McQueen, are you testifying under subpoena today?

A Yes.

Q How old are you?

A 26.

Q Where do you live?

A 3530 Armstead Avenue in the Bronx.

Q Are you currently employed?

A I was laid off Friday.

Q What were you doing on Friday?

A Oiler on a backhoe.

Q For whom?

A Norman Construction, something like that.

Q Are you currently a member of Local 15 or any of its branches?

A Member of Local 15-A.

Q When was the first time that you had any experience in the Operating Engineers trade?

A The job corps in 1965.

Q Where was that?

A Battle Creek, Michigan.

Q How did you get in the job corps program?

A Well, I didn't make any school, so I went to the job corps and I joined it.

Q Did you go with anybody else?

A Keith Wilson.

Q Also from New York?

A Yes.

Q How long a program was that?

A Well, normally it lasts a year, sometimes it is extended two months if you are slow.

Q How long did you stay in?

A I stayed a year.

Q Did you successfully graduate from the program?

A Yes.

Q Could you tell us what kind of program it was?

A It was part academic, part commercial and part trade.

Q What did the academic program consist of?

A Mathematics -- the same as you get at high school at a certain grade level.

Q What did the trade program consist of there?

A Carried the auto mechanic, construction, carried the truckdriver, carried a few more, but I was only interested in the heavy equipment.

Q Did you take the heavy equipment program there?

A Yes.

Q What did that program consist of?

A They start you off with a basic tractor and you learn to drive a tractor, like everybody can drive a car. After the tractor you go on to a basic bulldozer and after that to a larger dozer.and move to the H.D.-11 level. They had a grader.

Q What is the H.D.-11,will you describe that and speak up a little?

A The HD-11 is the equivalent of a 7, you know, a caterpillar 7 maybe. I don't know for sure, but it is quite a large one.

Q Which other equipment did they have there?

A They had many -- I will give it the same name they gave me. Here in New York it is not called by the numbers, and different names.

Q Will you tell us which as you go through, which equipment you learned to operate there?

A The backhoe, the dozer and the front-end loader.

Q How about something that is called a skid shovel?

A Well, a skid shovel is the same thing as a front-end loader but on tracks.

Q Any other name for a skid shovel?

A They call it an earth grader, but like the names they use in New York now, I am going by the same name they gave me in Battle Creek, Michigan.

Q Does that mean that some machinery is called one thing and some other people call it something else?

A I call it a front-end loader and some people may call it a 977 or whatever it is, which number.

Q The terms are used interchangeably?

A Yes, but they mean the same thing.

Q How did they teach you to operate that equipment?

A Well, to my knowledge the foreman or supervisor there was instructing us. They were all guys from the International local, supposed to be International men from the main union.

Q Do you know which union?

A Supposed to be the Operating Engineers.

Q How did they go about training you on this equipment? Take the average day, what would you do on an average day if you were working on a bulldozer?

A The average day in the job corps we went to class in the morning. The class didn't have anything to do with the machine.

In the afternoon we had a class for the trade. Like I started off with the basic tractors. Anybody should be able to drive a tractor. You learn to drive a tractor. Maybe two and a half, three weeks on tractors. From tractors we go to dozers and it may take more than two or three weeks. You are working with levers and blades.

After with the dozer, when they think you are competent enough to know the fundamentals of the dozer, they put you on a larger dozer which is with a larger blade, bigger blade.

Q How many hours each day would you operate a piece of machinery?

A We start off after 12, say from 1 until about 5.30 I think.

Q Was part of that time classroom time in the afternoon?

A Strictly machines in the afternoon. In the morning, strictly classroom.

Q After you learned a piece of machinery did they have you perform any work on it?

A About a month before I graduated from the job corps we were doing a job for, let us say Fort Custer. In some way they figured out something that we can work with the City so it wouldn't be big, let us say, because the job corps was mostly black and Puerto Rican and I guess most towns wanted to be in on that type of people so they can get along, so they figured out something that we can help build roads with the City.

Like we built a park,but I wasn't there for the completion of the park but I was there for the beginning of the park.

Q What kind of work did you do when they were building this park?

A I ran a dozer.

Q What did you do with the dozer?

A Cutting trees and pulling stumps and pushing

boulders, levelled off earth. It did a few of the basic work you do on a job.

Q Did you build any roads?
A Yes.
Q What kind of equipment did you run on building roads?

A At the time they were working roads I was driving a dump-truck.

Q Were you loading a dump-truck?

A I was driving a dump-truck because in construction, the job corps dump-truck is all the same thing, it is not broken up. It is all just one thing and you use the whole program.

Q When you told us, you said your foreman was a member of the International Union?

A Yes, we used to get magazines from the International telling you, like it started out, say the first week in the job corps I started as a mechanic but they have different unions sending in literature to the job corps centers and I read where they are making so much money and being I like money, I went to where the money was, so I went to the construction.

Q That is the Operating Engineers?

A It came from the International, right.

Q Do you know if there was any kind of recognition

of the job corps program by the International?

A From what I heard now, that specific job corps center, let us say, I think it was covered by the International. In other words, they recognized it for this type of work they did.

MR. KENNEDY: I won't object if we can have some identification as to who he heard it from.

THE COURT: Yes, who did you hear it from?

A We got a lot of literature and the literature would tell you what types of job that the International was giving out from the guys coming from Battle Creek, Michigan.

I don't know of any paper to show that this is what was stated in there, but like this is my words and I can tell you this is true because I am not lying and I just have to go by that. I have nothing to prove I read this but I did read it.

Q That is,that you would get a job after you graduated?

A Yes. They were saying, let's say, Washington, D.C., for instance, the International would give some guys in Washington, D.C. jobs coming back, and the type of money they would make and it goes from State to State. Each State was doing their share. That is why I got the bug, I could get in.

Q When did you graduate from the job corps?

A 1966.

Q Did you come back to New York?

A Yes.

Q When you got back to New York did you try to get work as an operating engineer?

A Well, they had like a center for returning guys from the job corps like for returning veterans. They were supposed to place you in different jobs but they couldn't, they tried but they said they couldn't get anything in the Engineers.

So I got this job in a bus company sweeping buses, but that was like temporary work. I did this for a summer. The summer was over, there was no work, so I joined the Army.

Q Which year was that that you joined the Army?

A 1967.

Q How long were you in the Army?

A Three years.

Q You enlisted in the Army?

A Yes.

Q How old were you when you enlisted, do you know?

A I was 19.

Q Where did you serve?

A Basic training in Fort Jackson, South Carolina, the Engineers. Then Fort Dix for training for whatever trade you are going to perform in the Army.

Q What kind of training did you get?

A Engineers supply parts specialist.

Q Where were you assigned next?

A Vietnam.

Q How long were you in Vietnam?

A Four years.

Q What did you do while you were in Vietnam?

A We were in the Engineers in the support command.

Q What did the support command do?

A Support all the infantry and everybody in that branch.

Q What kind of work did they do?

A The engineers do bridges, knock down trees, clear out perimeters. It is not like you do a building, but the basic work with machines.

Q What did you do?

A I was a supply parts specialist. I worked with the Engineers.

Q Did you operate any equipment while you were there?

A Every chance I got on the machines but it wasn't my job to operate the machine.

Q The Army let you do that?

A Yes, not the Army. It is if you know the sergeant you are all right. You can do what you want to.

Q Anybody complain about your kind of operating that you were doing?

A I never had any complaints.

MR. BRADY: Objection, your Honor. He didn't testify as I understand that he was operating.

THE COURT: He was not operating as part of his duties but he knew the sergeant so he used equipment.

MR. BRADY: I see.

Q Any of this equipment similar to the equipment used by Local 15 in New York City?

A The same equipment the Army used outside, just one is painted green and one is painted yellow. It is the same.

Q When were you discharged from the Army?

A 1971.

Q Honorably?

A Yes.

Q When you came out did you seek any employment as an operator in New York?

A When I came out like I really couldn't find no job. I actually didn't know anything about the Engineers because I could not get anything from the Job Corps. When I came out I got a job driving a dump truck with this contractor and they were paying me all right but it seems every week my check was decreasing instead of increasing even though I was doing overtime.

And so a friend of mine, Keith Wilson, at the time he was already working in the Engineers, with the Engineers and he told me to bring my paper work and the same thing that he had on down, so I did.

Q What do you mean by paper work?

A They gave a diploma and a sheet showing what machines you can run, what classes you took and that stuff.

Q The Job Corps had given you that?

A Yes.

Q Did you have any Army papers?

A My discharge.

Q Did you take that with you?

A Of course, yes, sir.

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Q Did you go down to the Local 15 office or hiring hall?

A The union hall, right.

Q Where was that then?

A In 14th Street.

Q When you got there what did you do?

A I was sent to Danny Murphy.

Q Talking about which year now?

A This is 1971 I guess.

Q Do you know which month?

A I say near June, during the summer or about the end of the summer.

Q What did you do when you got there?

A I gave all the papers to -- showed the papers to Danny Murphy.

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Q Did you say anything to him?

A I told him I want to get in the Engineers.

Q What did he say?

A He looked at the papers and told me to come out to the school near the airport and see some guy.-- I forget his name, I don't remember it is such a long time.

He would let me go on the machines and see what I could do.

Q Was that out near Kennedy Airport?

A Yes.

Q What did they ask you to do specifically when you got out there?

A I went straight-- actually where this guy was to locate him, I told him what went on when I went to the hall.

He told me to get on the back hoe and I ran the back hoe for a while.

Q What do you mean you ran the back hoe a while?

A Well, as far as he was concerned he wanted to see what I could do. He just told me to get up there and maybe dig a little bit and I dug a little bit and then he said get on the loader and I ran the loader a little while and then he said get on the dozer and I went on the dozer and he asked me have you ever been on this equipment before, after I was finished. I told him yes.

He said I had a feeling you did because you did pretty all right.

I asked him does this mean I can go back to the hall? He said yes, go back Monday morning, so I did.

Q Did you ever sign anything while you were out there?

A The first time I went to the school?

Q Yes.

A No, not that I recall.

Q Before you got on the machine did he tell you what he expected you to do with it, any specific task you had to perform?

A No, just told me to get on and dig. I figured there was a guy already digging a trench and I got the machine, you know, and continued.

Q How long did you take the back hoe, were you actually on the back hoe during this test?

A During this test, maybe 15 minutes.

Q The same with the dozer and the loader?

A Yes. I didn't stay there too long.

Q What did you do next with respect to getting work as an engineer back at the hall?

A I spoke again to Danny and he told me like to sign the book say Monday morning.

Q Did you sign the list?

A Yes.

Q Tell us what happens on Monday morning when you go in to sign the list?

A Well, you come into the hall, the hall is open about 7 but like I don't come to the hall 7 o'clock because it doesn't make any difference anyway to me because it seems no matter what time you come in, if they will give

you a job, they will give you a job.

Q Tell us what happens to the men when they report at the hall.

A I can tell you. Come in the hall, sit down and sign the roster, the list but you don't sign the list until about a quarter after 8. A quarter to 8, something like that.

Q Tell us about the list.

A The guys come in, the guys are in the hall, you wait until the list is brought and everybody gets up and signs.

Q In any kind of order?

A No, just get in line, no order. No first come first served.

Q What do you actually do when you sign the list? What happens? What does the business agent say to you and what do you say to him?

A I come up and I say good morning and he says good morning and he wrote my name down and he asked me if that is my name McQueen. I said yes. I gave the phone number and then he asked me what I run.

Q Did he do that back in 1971?

A When I first came to the local?

Q Yes.

A Yes.

Q That happened the first Monday you went there?

A The first time? Yes, sir. He didn't know my name at all so I gave it to him. I am telling you what happened this morning.

Q Did he write down what you could operate back in 1971?

A Yes.

Q Did he ask anything about where you had worked and how long you were out of work?

A No.

Q After you signed the list what happened?

A The first time?

Q Yes.

A I sat down, you know. I stayed there about two, three weeks maybe and I got sent on a well point job.

Q When you were sent on the well point job were you sent with anybody else?

A I think he came out and called four guys.

THE COURT: We will have to adjourn now until 10 o'clock.

(Adjourned to September 24, 1974, at 10 A.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
John A. Russell, Jr.	653	661		
David Jacobs	663	665		
Emil M. Ondrey	667	670	672	673
Jerome Koch	674	679		
Robert C. Meyer	680	700		
Ethelbert Spaggs	705	715	732	733
Earl Lites	736	763	780	
Fred Napoli	786	788		
Oswald Charles	789	808	823	823
Perry McQueen	826			

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
65		731
66		731
69		804
70		805
Defendant		
Local 15		
A	818	819

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court